

MAHARASHTRA METRO RAIL CORPORATION LTD.

(NAGPUR METRO RAIL PROJECT)

Volume II - Draft Concession Agreement

For

**Development and Operation on land admeasuring
19,889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz.
Dhantoli near Sitaburdi Interchange Station of Nagpur
Metro Rail Project on Public Private Partnership Basis**

Tender No: N1PD-30/2021

May, 2021



MAHARASHTRA METRO RAIL CORPORATION LTD.

**Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College,
Near Deekshabhoomi, Nagpur – 440010.**

Website: <http://www.metro railnagpur.com>

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Part I- Preliminary

CONCESSION AGREEMENT

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

BETWEEN

1. **Maharashtra Metro Rail Corporation Limited**, a company incorporated under the Companies Act, 2013, bearing registration Number, through Shri....., working as, its Authorised Signatory having its registered office at “Metro House, 28/2 Anand Nagar, C K Naidu Road, Civil Lines, Nagpur-440001” (**Corporate Office: Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010**) (hereinafter referred to as “**Maha-Metro**”), which expression shall, unless it be repugnant to the subject or context thereof, include its administrators, successors and assigns)) of the **ONE PART**;

AND

2. a Company registered under the provisions of the Act, bearing registration Number through Shri....., working as, its Authorised Signatory (duly authorised by consortium members vides their Board Resolutions dated,,) and having its registered office at, (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the **OTHER PART**.

WHEREAS:

- (A) Maharashtra Metro Rail Corporation Ltd. (Maha-Metro), a joint venture of the Government of India (GOI) and the Government of Maharashtra, is implementing the Nagpur Metro Rail Project (hereinafter called the ‘NMRP’). Maha-Metro has been authorised to develop real estates in and around the metro stations and other places in the MAHA METRO and generate revenues therefrom;
- (B) In pursuance to the above, Maha-Metro had resolved for development and operation on land admeasuring 19,889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli (bearing CTS Number – 09) near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis. The PPP model proposed for development is design, build, finance, operate and transfer (“DBFOT”) basis” (the “Project”) in accordance with the terms and conditions to be set forth in a Concession Agreement to be entered into;
- (C) Maha-Metro had accordingly invited bids by its Request for Proposal No.____ dated (the “Request for Proposal” or “RFP”) for selection of Concessionaire for the project of “Development and Operation on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis” and had selected _____ (the Selected Bidder) and has issued a Letter of Award (hereinafter called the ‘LOA’) bearing Letter No. _____ dated _____;
- (D) The Consortium has since promoted and incorporated M/s (the ‘SPC’) bearing CIN Number registered under the Companies Act 2013, and has requested Maha-Metro to accept the SPC as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- (E) The SPC has represented that it has requisite skill, financial, managerial & technical expertise and expertise to design, develop, operate, finance & maintain a state-of the art Commercial Project on the ‘Project Site’. The Concessionaire further represents and warrants that it/they has/have duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms contained in the bidding documents and are in a position to implement the Project as envisaged in the bid and this Agreement;
- (F) Pursuant to the acceptance of the Selected Bidder's bid and submission of the requisite payments, Maha-Metro has agreed to the said request of the selected bidder

(i.e. an individual bidder/ Consortium) to permit the SPC to proceed with the execution of the Project and has accordingly agreed to enter into this Concession Agreement with the Concessionaire pursuant to the LOA for, inter alia, the design, engineering, financing, procurement, construction, operation and maintenance of the said Project.

(G) It is deemed necessary and expedient to enter into this Agreement to record the terms and conditions of the said Agreement.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

"Affected Party" shall have the meaning set forth in Clause 24.1;

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

"Agreement Date" means the date of signing of the Concession Agreement;

"Annual Concession Fee" shall have the meaning set forth in Clause 20.2;

"Appendix" shall have the meaning set forth in Clause 10.2.1;

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

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

"Approvals" means all the mandatory approvals required for initiating the construction and thereupon, operation and maintenance of the Project, to be undertaken by the Concessionaire as per the Applicable Laws/ Permits;

"Arbitration Act" means the Arbitration and Conciliation Act, 1996 including Arbitration and Conciliation (Amendment) Act, 2015 and shall further include modifications to or any re-

enactment thereof, as in force from time to time;

"Maha-Metro Default" shall have the meaning set forth in Clause 27.1.3;

"Maha-Metro Representative" means such person or persons as may be authorised in writing by Maha-Metro to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of Maha-Metro under this Agreement;

"Bank" means any Nationalised/Scheduled Commercial Bank of Indian or Foreign origin having business office in India;

"Bid" means the documents in their entirety comprised by the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

"Bid Security" means the security provided by the Concessionaire to Maha-Metro along with the Bid and amounting to Rs. 70,00,000/- (Rupees Seventy Lakhs Only), in accordance with the Request for Proposals, and which is to remain in force until the Performance Security is submitted;

"Book Value" means the aggregate written down value as on the date of issue of the Termination Notice in the books of the Concessionaire of (i) the tangible assets (including capital works in progress) forming part of, fixed or attached to the ground, created, installed or provided by the Concessionaire and comprised in Project Facilities and Services, and (ii) the moveable assets including cargo handling equipment belonging to the Concessionaire, in accordance with Indian Accounting Standards using depreciation rates as set forth in the (Indian) Companies Act, 1956, as applicable from time to time.

"Built Up Area" shall have the meaning ascribed to it in the *UDCPR-2020*;

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

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

- (a) the enactment of any new Indian law;
- (b) the repeal, modification or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;

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), in the total Equity to decline below -

(i) (aa) 100% (One Hundred per cent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty one per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;

(ii) the lead member of the Consortium (whose experience will be evaluated for the purpose of evaluating the Financial Capacity of the Bidder/Consortium) undertake that, it shall subscribe to at least (a) 51% (Fifty one percent) of the paid up and subscribed equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (b) 26% (twenty six per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;

(iv) further commit that the member of the Consortium whose technical capacity was evaluated for the purposes of qualification and short-listing in response to the Request for Proposal shall hold to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;

provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be, in the proportion of the equity holding of (the selected bidder/ any Consortium Member) to the total Equity, if it occurs prior to completion of a period three years after COD, shall constitute Change in Ownership;

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

"Completion Certificate" shall have the meaning set forth in Clause 13;

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

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

"Concession Period" means the period starting on and from the Effective Date and ending on

the Transfer Date;

"Concessionaire Default" shall have the meaning set forth in Clause 27.1.2;

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

"Construction Period" means the period beginning from the Effective Date and ending on the 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 Maha-Metro, the applicable Cure Period shall be extended by the period taken by Maha-Metro to accord their approval;

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

"Damages" shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

"Debt Due" shall mean of the following sums representing the amounts advanced by the Lenders towards Total Project Cost, expressed in Indian rupees as may be outstanding and payable to the Lenders under the Financing Documents on the date of issuance of

Termination Notice:

- (i) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Project (the "**Principal**") but excluding (i) working capital loans; (ii) any part of the Principal that had fallen due for repayment two years prior to the date of Termination Notice;
- (ii) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of the debt until the date of Termination Notice but excluding
 - (a) any interest, fees or charges that had fallen due one year prior to the date of Termination Notice
 - (b) any charges payable under the Financing Agreements to any Lender
 - (c) any pre- payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Maha-Metro Default;

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

"Development Period" means the period of 48 months from the Effective Date as defined of this Agreement;

"Dispute" shall have the meaning set forth in Clause 33.1.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 33;

"Distribution(s)" shall mean all benefits received by the shareholders or the Affiliates or the Constituents of the Concessionaire from the Project or payments made by the Concessionaire, whether in cash or kind, and includes any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital, redemption or purchase of shares or any other reorganisation or variation leading to reduction of share capital;
- (c) payments of brokerage costs or otherwise under the Financing Agreements other than Debt Servicing of Principal and interest;
- (d) payment, loan, contractual arrangement or vesting of any assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) the receipt from novation etc. or receipts of any other benefit, which is not received in the ordinary course of business and on reasonable commercial terms;

"Divestment Requirements" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 28.1;

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

"Drawings" means all of the drawings, calculations and documents pertaining to the Project and shall include 'as built' drawings of the Project;

"Effective Date" "means the date on which the Conditions Precedent of both the Parties to the Agreement have been fulfilled;

"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 to payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, wherever applicable herein but excluding utilities referred to in Clause 11.1;

"Financial Default" shall mean occurrence of a breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a period of 3 (three) months;

"Financial Model" shall mean the financial model, prepared by the Concessionaire and approved/adopted by the Lenders for entering into the Financing Agreement with the Concessionaire, setting forth the capital and operating costs of the Project including replacement costs, the mode of financing of such costs, revenues from the Project and the Equity IRR over the full Term of the Agreement 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;

Financing Agreements" shall mean the agreements executed by the Concessionaire in respect of financial assistance to be provided by 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 financing of the Project;

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in Clause 24.1;

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

"GOM" means the Government of Maharashtra;

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

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

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 31;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 31;

"Indirect Political Event" shall have the meaning set forth in Clause **Error! Reference source not found.**;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 22, and includes all insurances required to be taken out by the Concessionaire under Clause 22.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

'Layout Plan' means the detailed plan for the Project formulated by the Concessionaire, in accordance with the provisions as contained in Article 10 of the Agreement, norms and regulations prescribed under the Master Plan and Building Bye-Laws of Nagpur and other conditions approved in writing by Maha-Metro;

“Lenders” shall mean financial institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any Financing Agreements for meeting the costs of the Project;

“Lenders’ Representative” shall mean the Lender or Lenders’ agent duly authorized by all the Lenders to act for and on behalf of the consortium of Lenders with regard to matter arising out of and in relation to the Financing Agreements and includes its successors, assigns and substitutes;

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

“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;

“Nominated Company” shall mean the entity that is selected either by the Lenders’ Representative or by Maha-Metro for substituting the Concessionaire, upon the occurrence of a Concessionaire Default or Financial Default, in terms of the provisions of the Agreement and the Substitution Agreement;

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

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

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

"Performance Security" shall have the meaning set forth in Clause 9.1;

"Project" means the engineering, procurement, construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project 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; (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 authorisations relating to or in respect of the Project, but does not include Additional Facilities;

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

"Project Facilities" shall mean all fixed assets constructed by the Concessionaire but not the Site itself;

"Project Revenue" shall refer to and mean all the monies (Gross) received by the Concessionaire, excluding GST, pursuant or incidental to –

- i. the Sub-Lease of proposed space in Project Facilities and Project Utilities
- ii. exploitation in any permitted manner of the Site, Project Facilities and Project Utilities by any person, whether at the instance of the Concessionaire or the Sub-Lessee, including but not limited to capital receipts, upfront Sub- Lease payments, deposits, advances, registration payments, instalments received from Sub-Lessees, Sub-Lease charges, and shall also include the revenue earned pursuant to the services provided or to be provided by the Concessionaire to the Sub-Lessees or any person exploiting in any manner whatsoever the Project Facilities and Project Utilities;
- iii. all receipts from parking of vehicles, display, signage, play area, events, road shows, promotional activity, hoardings, kiosks, advertisements and counters etc.

“Project Site” means the land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) Mz. Dhantoli, bearing CTS Number 9, near Sitaburdi Interchange Station of Nagpur Metro Rail Project.

“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;

“Related Party/ies” shall mean

1. a director or his relative;
2. a key managerial personnel or his relative;
3. a firm, in which a director, manager or his relative is a partner;
4. a private company in which a director or manager or his relative is a member or director;
5. a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
6. anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
7. any person on whose advice, directions or instructions a director or manager is accustomed to act:
that nothing in sub-clauses (6) and (7) shall apply to the advice, directions or instructions given in a professional capacity;
8. any company which is— a holding, subsidiary or an associate company of such

company; or – a subsidiary of a holding company to which it is also a subsidiary; included in Amendment 2017

9. such other person as may be prescribed;

*An investing company or the venturer of the company.

Also Father incl. step father, Mother incl. step mother Son incl. step son, Son's wife, Daughter Daughter's husband, Brother incl. step brother, Sister incl. step sister are included

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

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

"Safety Requirements" shall have the meaning set forth in Clause 1817.1.1;

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

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

"Site" shall have the meaning set forth in Clause 10;

"Substitution Agreement" shall mean the substitution agreement, substantially in the form set forth in the Schedules as entered into/ proposed to be entered into between Maha-Metro, Concessionaire, and the Lenders in relation to the substitution of the Concessionaire with the Nominated Company in accordance with the Agreement;

"Substitution Premium" shall mean the lump sum amount, to be paid upfront to Maha-Metro, offered as financial bid by the party selected as the Nominated Company through a competitive bidding process, conducted as part of the Substitution, for substituting the Concessionaire and as per the Agreement;

"State" means the State of Maharashtra and **"State Government"** means the government of that State;

"Suspension" shall have the meaning set forth in Clause 26.1;

"Total Consideration" shall have the meaning set forth in Clause Article 20;

"Taxes" means any applicable international taxes and Indian taxes including but not limited to excise duties, customs duties, Goods and Service tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the Constructions, 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 of the Concession Period or termination of this Agreement and the Concession hereunder, whichever is earlier;

"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 Maha-Metro to the Concessionaire upon occurrence of Termination and/ or default by respective Parties to the Agreement and may consist of payments as defined in this Concession Agreement.

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

"Upfront Premium" shall have the meaning set forth in Clause 20.1;

"User" means a person who using the Project and Project Facilities or any part thereof on payment of User Charges in accordance with the provisions of this Agreement and Applicable Laws;

"Vesting Certificate" shall have the meaning set forth in Clause 28.4; and

"WPI" shall mean 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 deems otherwise, be construed as a reference to the WPI published for the period ending with the preceding month

1.2. Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, government orders, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "**person**" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "**include**" and "**including**" are to be construed without limitation and shall be deemed to be followed by "**without limitation**" or "**but not limited to**" whether or not they are followed by such phrases;
- (f) references to "**construction**" or "**building**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or "**build**" shall be construed accordingly;
- (g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and "**develop**" shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Nagpur are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**" a specified day or date shall include both such days or dates; provided

- that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
 - (o) references to any gender shall include the other and the neutral gender;
 - (p) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
 - (q) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (r) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
 - (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of Maha-Metro hereunder or pursuant hereto in any manner whatsoever;
 - (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
 - (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
 - (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
 - (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to Maha-Metro shall be provided free of cost and in three copies, and if Maha-Metro is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses and schedules

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

- (a) this Agreement; and
- (b) RFP document for tender No. dated along with all the corrigendum issued.
- (c) 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) and (c), (b) above shall prevail over the agreements and documents at (c) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

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

Part II- The Concession

ARTICLE 2 SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- 2.1.1 Design, Construction, Procurement, Operation and Maintenance of the Project including the Assets and Project Utilities comprised in the Commercial Development on part of land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project as set forth in the Schedule 1 of this Concession Agreement (‘Project Site’).
- 2.1.2 The detail scope of work to be executed by the Concessionaire is mentioned in **“Schedule – B”** of this concession agreement.

ARTICLE 3 GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, Maha-Metro hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to develop/construct, operate and maintain the Project (the "**Concession**") for a period of **60 (sixty) years** commencing from the Effective Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein;

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

- (a) Right of Way, access and lease rights to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) to design, engineer, finance, procure and construct the Project;
- (c) manage, operate and maintain the Project and regulate the use thereof by third parties;
- (d) demand, collect and appropriate revenue from the Users for using the Project Assets or any part thereof;
- (e) perform and fulfil all the Concessionaire's obligations under and in accordance with this Agreement;
- (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
- (g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.

3.1.3 The Concession Period shall commence on the Effective Date and shall end on the Transfer Date.

3.2 Grant subject to obligation

3.2.1 It is clarified that the rights granted in respect of the Project under this Article 3 to the Concessionaire are subject to the conditions attached to exercise of such rights and performance of its obligations as set out in the Agreement and other documents executed pursuant to the Agreement.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Article 4, Article 9, Article 10, Article 21, Article 26, and Article 35 or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.2 and 4.3 (the "Conditions Precedent").

4.2 Conditions Precedent of Maha-Metro

4.2.1 Maha-Metro shall have:

- a. Ensured for the Concessionaire the vacant and peaceful possession of the Site, as a Lessee, in accordance with the provisions of Clause 10.2.1.

4.3 Conditions Precedent of the Concessionaire

4.3.1 The Concessionaire has fulfilled the following Conditions Precedent before signing of Concession Agreement –

- (a) On Formed an appropriate SPV (Special Purpose Vehicle) in the name of to execute the concession agreement.
- (b) paid the Upfront Premium amounting to Rs. 20,00,00,000/- (Rupees Twenty Crores Only) In the form of dated from Bank;
- (c) paid the Performance Bank Guarantee amounting to **Rs. 14,50,00,000/- (Rs. Fourteen Crores Fifty Lakhs only)** from Nationalised/ Scheduled Commercial Bank valid for a minimum period of 54 months from the date of submission. The Performance Bank Guarantee shall be payable at Nagpur;
- (d) deposited to the authority and amount of Rs. for payment towards Stamp Duty and Registration fees/charges of the agreement.
- (e) delivered to Maha-Metro from the Consortium Members, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of Clause 7.1 of this Agreement.

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, development/construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits, and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and into the Project; systems used or incorporated;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) ensure that its Contractors procure and comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (g) (only in the event early termination) support, cooperate with and facilitate Maha-Metro in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (h) transfer the Project/ Project Facilities to Maha-Metro upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to Maha-Metro 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 no review and/or observation of Maha-Metro 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 Maha-Metro be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of Maha-Metro if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on Maha-Metro, 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 Maha-Metro. For the avoidance of doubt, Maha-Metro acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of Maha-Metro.
- 5.3.2 The Concessionaire shall undertake that, the Members of the Consortium shall collectively hold at least (aa) 100% (One Hundred per cent) of the subscribed and paid up equity of the SPC at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and (bb) 51% (Fifty one per cent) of the subscribed and paid up equity of the SPC at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;
- 5.3.3 The Concessionaire shall undertake that the lead member of consortium whose experience will be evaluated for the purpose of evaluating the Financial Capacity of the Bidder/Consortium, shall subscribe to at least (aa) 51% (Fifty one percent) of the paid up and subscribed equity of the SPV at all times until completion of 04 years from the date of signing of concession agreement or the commercial operation date of this Project, whichever is later; and thereafter 26% (twenty six per cent) of the subscribed and paid

up equity of the SPV at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later.

5.3.4 The Concessionaire shall undertake that the member of consortium whose experience will be evaluated for the purpose of evaluating the Technical Capacity of the Bidder/Consortium, shall subscribe to at least 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV at all times till the 7th Anniversary of the date of signing of Concession Agreement or the completion of 3 years of commercial operations of the project, whichever is later;

5.3.5 The Concessionaire shall undertake that each of the members whose experience will be evaluated for the purposes of this Bid Document, shall subscribe to and hold equity share capital not less than 5% (five per cent) of the Estimated Project Cost specified in the Concession Agreement;

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Sole purpose of the Concessionaire

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

5.7 Obligations related to Sub-leasing of built up area

- 5.7.1 The Concessionaire shall be allowed to sub-lease the built-up premises, however, the Sub-Lessee shall have no right to further sub lease the premises.
- 5.7.2 The sub-Lease shall however be for the use of the built-up areas within the project premises, during the subsistence of the Leased Period only with a clear stipulation that all such sub-Lease granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessee, and further that such Sub-Lessee shall not have any claim or seek any compensation from Maha-Metro for such termination.
- 5.7.3 The list of terms to be included in the Sub-Lease Agreement are at "Schedule L of the Draft Concession Agreement".
- 5.7.4 The Concessionaire shall submit copies of each such sub-lease deed to Maha-Metro for verification and record.
- 5.7.5 The Concessionaire shall submit copies of each such sub-lease deed to Maha-Metro for verification and record.
- 5.7.6 At any point of time, the Lessee shall not enter or cause any of its Sub- Lessee to enter into any sub-Lease agreement with any person or entity for transfer of its rights which would adversely affect the interests of Maha-Metro or is not available to the Concessionaire/Successful Bidder in the first place. Any such act of the Concessionaire or Sub-Lessee shall render the Concession Agreement liable for termination at the sole cost and expense of the Lessee.
- 5.7.7 In case the Concessionaire fails to pay the Annual Concession Fee to Maha-Metro for four consecutive times, the Maha-Metro shall have right to receive the Concession Fee from the Sub-Lessee directly, on pro-rata basis for the built-up area under use of Sub-Lessee taking in to consideration of prevailing Concession fees of entire premise.
- 5.7.8 In the circumstance of Clause No 5.7.7 above, all clauses, terms & conditions of this Concession Agreement shall be applicable to Sub-Lessee mutatis mutandis.
- 5.7.9 The Concessionaire shall not have any ownership right over the Project Site, and he has no right to sell it, or a part thereof, to any entity at the any stage of the subsistence of the Concession Period and thereafter.
- 5.7.10 The Concessionaire shall be allowed to execute any related party transaction (sub-lease the built-up premises to related party) only after taking prior approval from Maha-Metro. Any transaction executed without prior approval of Maha-Metro shall be considered null and void. Execution of such transactions shall be treated as major default and in such event Maha-Metro shall forfeit the Security Deposit deposited by the concessionaire. The

provisions pertaining to related party transactions to be restricted/made applicable to revenue transactions only.

5.7.11 It shall be binding on the Sub-lessee to abide by the provisions of this Agreement and shall also use the premises only as per the permissible uses as allowed in the applicable **UDCPR-2020**.

5.7.12 The Subleasing Agreement should be registered from the Sub-registrar Office and a copy of same should be submitted to Maha-Metro Office within 30 days of execution of such agreement.

5.8 Authorised Representative and Project Manager

5.8.1 The Concessionaire shall, within 30 (thirty) days from the Agreement Date, nominate its Authorised Representative and shall authorise him for all correspondence, communication, signing of documents, participation in meetings etc. with Maha-Metro in respect of the Project and issues relating to or arising out of the Agreement.

5.8.2 The Concessionaire shall, prior to the Effective Date, nominate a Project Manager, who shall supervise and be overall in-charge of all construction activities being undertaken by the Concessionaire at the Project Site during the Construction Period.

5.8.3 The Project Manager shall be the Project Site representative of the Concessionaire for interaction with the authorised representatives of Maha-Metro visiting the Project Site or dealing with the Project during the Construction Period. In case the Project Manager is not available, he shall ensure that its authorised agent is available for the Project, who shall, present himself to Maha-Metro's Representative and orders given by Maha-Metro Representative or its representative to the authorised agent of the Project Manager shall be deemed to have the same force as if they had been given to the Project Manager.

5.8.4 The Concessionaire shall provide all necessary superintendence during the design, construction and operations of the Project and as long thereafter as the Maha-Metro may consider necessary for the proper fulfilment of the Concessionaire's obligation under the Agreement.

5.8.5 The Concessionaire shall at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct, by or amongst, his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Project, against such conduct. The Concessionaire and his Sub-Contractors shall disclose a list of all their employees and workmen, who are involved in the Project, to the authority. The Concessionaire shall ensure that under no circumstances, the employees and workmen of the Concessionaire or any Sub-Contractor, are otherwise deemed to be employees of Maha-Metro.

5.9 Obligation with respect to Taxes, duties etc.

5.9.1 The Concessionaire shall, with effect from Agreement Date or the date of handover of

project site, whichever is later, pay all outgoing, applicable international and central/state/local govt. taxes and levies such as Non-Agriculture Tax, Water Bills, Electric Bills, Entertainment Tax, Luxury Tax, GST, Royalty and all other applicable taxes all increases thereto, fees (including any license fees) rates and other user charges (including those applicable for existing utility connections and any other dues, cess, assessments or outgoing payable in respect of implementation of the Project (including new utility connections obtained by it, if any) or in respect of the materials stored therein which may be levied by any Government Authority. The payment / dues will be paid directly to the respective authority/ utility provider.

- 5.9.2 Any new levies, taxes, cess etc. if any, imposed by Government Authorities on Maha-Metro for awarding the contract shall be recovered from the Concessionaire separately by Maha-Metro.
- 5.9.3 The Concessionaire shall be solely responsible to pay all applicable International Taxes and shall bear all cost and expenses for various compliances with respect to FEMA/FERA regulations.

5.10 Safety, Health & Environment Obligations

- 5.10.1 The Concessionaire shall undertake the Project during the Term with due regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, control of pollution, maintenance of competent personnel and labour and industrial relations. The Concessionaire shall undertake the Project in accordance with rules and regulations as set out in the Building and Other Constructions Workers Act, 1996 including all time-to-time amendments (hereinafter referred to as the "BOCW Act") and other applicable rules.
- 5.10.2 The Concessionaire shall provide sufficient sanitary arrangements for the labour, workmen and other staff employed for the Project in order to keep the Project Site and the surroundings clean and in good condition to the satisfaction of Maha-Metro.
- 5.10.3 The Concessionaire shall develop the Project in accordance with the safety, health, environment and pollution control criteria set forth in the Applicable Laws and in accordance with terms and conditions contained in various Applicable Permits. The Concessionaire shall take all precautions to avoid any accidents, emergency medical aid to accident victims health issues, pollution or contamination of the air, land or water arising out of the implementation of the Project (whether at the Project Site or elsewhere).

5.11 Connections & Utilities for the Project

5.11.1 Connections and utilities for the Construction Period:

The Concessionaire shall be solely responsible for seeking connections and ensuring the supply of all essential utilities including but not limited to electricity, water, fuel,

consumables and any other services necessary or incidental to the implementation of the Project and that all such facilities shall be at the cost and expense of the Concessionaire. In particular, the Concessionaire shall be solely responsible to procure, at its own cost and expense, all water, electricity and all other utilities required for the construction of the Assets for the Project.

The Concessionaire shall, from time to time, pay all the charges/bills for the usage of all utilities and infrastructure facilities provided to them by the relevant Government Authority. The payment /dues will be paid directly to the respective authority/ utility provider.

Maha Metro shall provide necessary support and co-operation to the Concessionaire for obtaining access to utilities, however the same without incurring any liabilities if such access is delayed or denied. Such support shall be provided by Maha-Metro on best effort basis without any binding obligations.

5.11.2 The Concessionaire shall take all measures, including applying for any and all utility connections from suitable Government Authorities to provide all the utilities and infrastructure facilities (including through the Project Utilities) required for the Project. Further, the Concessionaire shall undertake all measures required to be undertaken for separate metering of all such utilities and Project Utilities utilized by the users of the Project Site or Assets thereon.

5.12 Approvals & Licences for the Project

5.12.1 The Concessionaire shall observe and conform to all Applicable Laws relating to the Project, the Project Site in any way and in particular but not limited to all public and labour related issues including health and sanitation in force for the time being. The Concessionaire shall ensure and shall remain responsible that its Sub-Contractors shall also adhere with Applicable Laws as required in the Agreement.

5.12.2 The Concessionaire shall at all times, obtain and keep valid all Applicable Permits, which are required by Applicable Law, to undertake the Project.

5.12.3 Without prejudice to the foregoing:

- a. The Concessionaire and its Sub-Contractors shall be responsible to ensure compliance with the provision of the Minimum Wages Act, 1948 and the Rules made thereunder.
- b. The Concessionaire and its Sub-Contractors shall comply with the provisions of the Payment of Wages Act, 1936 and the rules thereunder as may be applicable from time to time.
- c. The Concessionaire shall comply with the provision of Building and Other Constructions Workers Act, 1996 including all time-to-time amendments, Contract Labour (Regulation and Abolition) Act, 1970 and rules framed thereunder and as modified from time to time, where ever applicable.

- d. The Concessionaire shall be responsible for the safety of all employees directly or through Sub-Contracts employed by it on the Project and shall report serious accidents to any of them however and wherever occurring on the Project to Maha-Metro Representative or Maha-Metro Representative's Representative and shall make every arrangement to render all possible assistance.
- e. The Concessionaire shall observe and make its Sub-Contractors observe and follow all the provisions of the applicable labour laws and other statutory laws or any modifications or re-enactments thereof for the time being in force and any rule and regulations made thereunder.
- f. For the purposes of all Applicable Laws, the Concessionaire shall be deemed to be the principal employer of all workers working at the Project. The Concessionaire shall indemnify Maha-Metro from and against any Liabilities under any of the Acts or Rules thereunder mentioned in this Article or any other Applicable Laws, and in case through order of any Government Authority, Maha-Metro or the Railway has to pay any compensation in respect of the Project, Maha-Metro shall recover such amount of compensation so paid from the Security Deposit or otherwise from the Concessionaire under these conditions.

5.13 Protection of the Site (Fencing)

- 5.13.1 After receiving the Lease Rights to the Project Site, the Concessionaire shall ensure that the land remains free from all encroachments during the Lease Tenure/ Concession Period.
- 5.13.2 Within 90 (ninety days) of receipt of right of access of the Project Site, the Concessionaire shall secure the Project Site with environment-friendly hoarding of height as per Applicable Law, not less than 1.8 meters of steel, on all sides (for outdoor areas), in each case with access controlled gate in the manner approved by Maha-Metro Representative. No construction debris, equipments, material should be kept outside the enclosed Project Site without specific permission of the Maha-Metro.
- 5.13.3 The Concessionaire shall not commence any construction and development work upon the Project Site, except after securing the Project through fencing/boundary wall and requisite approval from the Government Authorities with respect to Building Plan approvals and approval of the Commercial Development Plan from the Representative of Maha-Metro.
- 5.13.4 Within 90 (Ninety) days of receipt of vacant and peaceful possession to the Project Site, the Concessionaire shall secure the Project Site in accordance with the provision of Schedule B and F (Project Work, Safety and Access Requirements).

- 5.13.5 No activity related to construction shall block the adjacent roads in the circulating area at any time or hinder passenger or vehicle movement or cause congestion at the Project Site.
- 5.13.6 The Concessionaire shall appropriately cover walkways and passenger access areas so as to protect public/users/persons from debris / falling objects near and around the work site.

5.14 General Obligation in relation to the Project

- 5.14.1 Save and except the development, construction of the project in accordance with applicable laws and conduct the operations of the commercial/ retail activities therefrom, the Concessionaire shall not permit anything to be done on the Project Site which may be unlawful, a nuisance, annoyance or disturbance to the owners, occupiers, passengers or residents of other premises in the vicinity.
- 5.14.2 The Concessionaire shall design and construct all permanent civil structure(s) in the Project for a minimum design life of 60 (Sixty) years (the "Design Life").
- 5.14.3 The Concessionaire shall be responsible for all risk to the work and for trespass and shall make good at his own expense all loss or damage whether to the works themselves or to any other property of Maha-Metro (situated on project site) or any other third party or the lives, persons or property of others from whatsoever cause in connection with the Project despite all reasonable and proper precautions that may have been taken by the Concessionaire. The Concessionaire shall obtain public liability insurance during the period of construction and operation of the Project and hereby indemnifies Maha Metro from any liabilities arising from the design, construction and operation of the Project.
- 5.14.4 In case Maha-Metro is called upon to make good any costs, loss or damages, or to pay any compensation (including that payable under the provisions of the Workmens' Compensation Act or any statutory amendments thereof) to any person or persons sustaining damages as aforesaid by reason of any act, or any negligence or omissions on the part of the Concessionaire the amount of any costs or charges including costs and charges in connection with legal proceedings, which Maha-Metro may incur in reference thereto, shall be charged to the Concessionaire. Maha-Metro shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings or in anticipation of legal proceedings being instituted consequent on the action or default of the Concessionaire, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to Concessionaire, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise and the incurring of any such expenses shall not be called in question by the Concessionaire.

- 5.14.5 The Concessionaire shall undertake the Project using due care and diligence in a professional manner, using sound engineering, design and project management principles and supervisory procedures in accordance with Good Industry Practice and for that it shall retain, engage and consult, qualified and experienced professionals and consultants with good credentials and experience in relation to a project similar to the Project, which is the subject matter of the Agreement.
- 5.14.6 The Concessionaire shall be obliged to complete the Project latest by the Scheduled Completion Date of Project and shall obtain Construction Completion Certificate for the Project.
- 5.14.7 The Concessionaire shall not make any excavation upon any part of the Project Site nor remove any stone, sand, gravel, clay or earth therefrom except for the purpose of forming foundations of buildings or for the purpose of executing any work pursuant to the terms hereof .
- 5.14.8 The Concessionaire will ensure that all materials, equipment, machinery etc. installed at the Project Site and/or used for the purposes of the Project will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required.
- 5.14.9 Upon completion of the activity of construction of the Project, the Concessionaire shall remove promptly from the Project, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish, rubble and other debris (including without limitation accident debris) and shall keep the land in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.
- 5.14.10 During the execution of Project, the Concessionaire shall take all reasonable care and caution as per standard industry practice and endeavor no damage, injury or loss is caused to any person or property arising from the design, construction and operation of the Project.
- 5.14.11 Existing roads or water courses shall not be blocked, cut through, altered, diverted or obstructed in any way by the Concessionaire, except with the permission of Maha-Metro Representative and the other relevant Government Authority(s). All compensations claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Concessionaire or his agent or his staff shall be recoverable from the Concessionaire.
- 5.14.12 During the progress of work with respect to the Project in any street or thoroughfare, the Concessionaire shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reasons of the execution of the works and shall erect and maintain lights and other safeguards as prescribed by

- Maha-Metro Representative or the Applicable Permits, for the regulation of the traffic and provide necessary security and safety arrangements to prevent accidents.
- 5.14.13 The Concessionaire shall be responsible to take all precautions to ensure the safety of the public whether on Public property and shall post such look out men, and undertake such other safety measures, as may be required to comply with regulations appertaining to the Applicable Laws and any instructions of Maha-Metro Representative.
- 5.14.14 Upon obtaining due permission form the respective authorities, the Concessionaire if required can work during night hours.
- 5.14.15 The Concessionaire shall employ suitable mechanism such as washing facility of wheels of vehicles entering/leaving the work site to reduce pollution.

5.15 Obligations Related to Mortgage

The Concessionaire will be provided with the leasehold rights of the project site as per the terms and conditions of the Concession Agreement. Under no circumstances the Maha-Metro’s land parcel or part thereof shall be mortgaged by the Concessionaire in any manner whatsoever. For raising finances through debt/equity, the Concessionaire will have the rights to avail project financing and also shall have right to mortgage the built-up area/ constructed area of the project along with movable assets, if any. Maha-Metro upon written request made by the Concessionaire shall provide NOC for availing project financing.

ARTICLE 6 OBLIGATIONS OF THE MAHA-METRO

6.1 Obligations of Maha-Metro

- 6.1.1 Maha-Metro shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 Maha-Metro agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) grant the Concessionaire the vacant and peaceful possession of the Project Site, in accordance with the terms of Article 6 hereof respectively.
 - (b) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for construction, implementation and operation of the Project, without any binding obligation;
 - (c) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity;
 - (d) 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, law and order or collection of inter-state taxes;
 - (e) 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;
 - (f) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (g) ensure there is no obstruction or hindrance to the development & construction of the Project due to Maha Metro operations;

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to Maha-Metro that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give

- rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
 - (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 of this Concession Agreement;
 - (l) Provided further that any such request made under this Clause 7.1(k), at the option of Maha-Metro may be required to be accompanied by a suitable no objection letter from lenders;
 - (m) (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;
 - (n) (the selected bidder/ each Consortium Member) is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested Maha-Metro to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
 - (o) all its rights and interests in the Project shall pass to and vest in Maha-Metro 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 Maha-Metro, 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;
 - (p) no representation or warranty by it contained herein or in any other document furnished by it to Maha-Metro or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
 - (q) 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 Maha-Metro in connection therewith; and

- (r) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of Maha-Metro

Maha-Metro represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement.

7.3 Disclosure

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

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by Maha-Metro or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Maha-Metro 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 Maha-Metro in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that Maha-Metro shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of Maha-Metro to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of Maha-Metro contained in Clause 8.1.1 and shall not in any manner shift to Maha-Metro any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and Maha-Metro shall not be liable in any manner for such risks or the consequences thereof.

Part III- Development and Operations

ARTICLE 9 PERFORMANCE SECURITY AND SECURITY DEPOSIT

9.1 Performance Security

9.1.1 The Concessionaire has, for the performance of its obligations hereunder during the Construction Period, provided to Maha-Metro before the Agreement Date, an irrevocable and unconditional Bank guarantee from any Scheduled Bank for a sum equivalent to **Rs. 14,50,00,000/- (Rs. Fourteen Crores Fifty Lakhs only)** in the form set forth in Schedule-D (the "**Performance Security**") initially valid for a minimum period 54 (Fifty-Four) months from the date of submission to Maha-Metro.

9.1.2 The Performance Security shall be extended in the event if the scheduled construction date is extended beyond 04 years from date of signing of Concession Agreement.

9.2 Security Deposit

9.2.1 The Concessionaire has, for the performance of its obligations hereunder during the entire Concession Period, provided to Maha-Metro before the signing of the Concession Agreement, a Security Deposit amounting to the Annual Concession Fee for the 1st Year of Commercial Operations of the project as submitted/committed in the business plan of the project. The Security Deposit shall be with Maha-Metro for the entire Concession Period and shall be treated as "Interest Free deposits". The Security Deposit shall be submitted prior to 30 (Thirty) Days before expiry of 4th Year reckoned from the date of signing of Concession Agreement or the prior to Commercial Operations of the project, whichever is earlier.

9.2.2 The Annual Concession Fees shall be paid in the form of NEFT/RTGS/Online Transfer /Cheque in favour of Maharashtra Metro Rail Corporation Ltd.

9.2.3 Maha-Metro shall encash/adjust the Security Deposit against any defaults/penalties as levied upon the Concessionaire during the entire Concession Period.

9.2.4 The Security Deposit shall be revised every three years. At the end of every three years from the date of commercial operations of the project, the concessionaire shall deposit an amount equivalent to the Balance amount, i.e difference between amount already deposited with Maha-Metro and the Annual Concession Fees due in the immediately next agreement year, as per his submitted business plan.

9.3 Appropriation of Performance Security and/or Security Deposit

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, Maha-Metro shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security and/or the Security Deposit as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from

the Performance Security and/or the Security Deposit, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security and/or the Security Deposit, and in case of appropriation of the entire Performance Security and/or the Security Deposit provide a fresh Performance Security and/or the Security Deposit, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security and/or the Security Deposit as aforesaid failing which Maha-Metro shall be entitled to terminate this Agreement in accordance with Article 27. Upon replenishment or furnishing of a fresh Performance Security and/or the Security Deposit, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, Maha-Metro shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 29.

9.4 Release of Performance Security

The Performance Security amounting to **Rs. 14,50,00,000/- (Rs. Fourteen Crores Fifty Lakhs only)** shall remain in force and effect for a period of 54 months from the date of submission or the Construction Completion Date; whichever is later.

The Concessionaire shall make all necessary arrangements to keep the Performance Security valid and in force at all the times during period of 54 months from the date of submission or till completion of construction of the Project, whichever is later. The Performance Security shall be released within 6 months of availing the Occupation Permit/ Completion Certificate from the concerned planning/ local authority, subject to Maha-Metro’s right to receive or recover amounts if any due from Concessionaire under this Agreement.

9.5 Release of Security Deposit

The Security Deposit shall remain in force and effect for the entire Concession Period. This Security Deposit shall be released upon the completion of entire Concession Period and/or the termination (payable only in the event of non-Concessionaire Default) date whichever is earlier. The Security Deposit shall be released subject to Maha-Metro’s right to receive or recover amounts if any due from Concessionaire under this Agreement. No interest shall be paid on the Security Deposit.

ARTICLE 10 THE SITE

The site of the Project is described in Schedule-A and in respect of which the vacant and peaceful possession shall be provided and granted by Maha-Metro to the Concessionaire as a "Lessee" under and in accordance with this Agreement (the "Site").

10.1 Lease, Access and Right of Way

10.1.1 Maha-Metro hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations that the Concessionaire may deem necessary prior to the Effective Date, it being expressly agreed and understood that Maha-Metro shall have no liability whatsoever in respect of survey, investigations carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.1.2 In consideration of this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, Maha-Metro, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Effective Date, leasehold rights and vacant possession in respect of all the land comprising the Site which is described, delineated and shown in Schedule-A hereto (the "Leased Premises"), 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.

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

10.1.4 It is expressly agreed that the lease granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by Maha-Metro 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(s), the lease in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.1.5 The Concessionaire hereby irrevocably appoints Maha-Metro (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the 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 Maha-Metro Representative of Maha-Metro, and the Concessionaire consents to it being registered for this purpose.

10.1.6 It is expressly agreed that trees on the Site are property of Maha-Metro except that the

Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period. Provided further that, upon receipt of permission from competent authorities, the Concessionaire shall have the right to remove or transplant the trees for the purpose of construction of the Project.

10.2 Procurement of the Site

10.2.1 Pursuant to the notice specified in Clause 4.2, Maha-Metro 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 trees on or attached to the Site. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.1.2, 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 Maha-Metro to the Concessionaire. No separate lease deed will be executed. The Concession Agreement shall act as Lease cum Concession Agreement.

10.2.2 On and after signing the memorandum referred to in Clause 10.2.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or illegal occupation on any part thereof, the Concessionaire shall report such encroachment or illegal occupation forthwith to Maha-Metro and undertake its removal at its cost and expenses.

10.2.3 Maha-Metro shall grant, within 30 (thirty) days from the date of fulfilment of Conditions Precedent by Concessionaire, the vacant and peaceful possession of the Site to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, then the last date shall be extended by period equivalent to the number of days of delay from the 30th day from the date of fulfilment of Conditions Precedent by Concessionaire till the day of fulfilling of such Conditions Precedent by Maha-Metro.

10.2.4 In the event the vacant and peaceful possession to the Concessionaire in respect of all land included in the Appendix, is not granted by Maha-Metro, for any reason whatsoever on or prior to the expiry of 180 (One Hundred and Eighty) days from the date of fulfilment of signing of Concession Agreement, then unless waived by the

Concessionaire, the Concession Agreement may be liable to Termination on account of Maha-Metro Default.

10.3 Site to be free from Encumbrances

Subject to the provisions of Clause 10.1.6, the Site shall be made available by Maha-Metro to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to Maha-Metro 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 in so far 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.

10.4 Protection of Site from encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and all unauthorised 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.

10.5 Access to Maha-Metro and Any Government Agency Representative as directed by Maha-Metro

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 Maha-Metro and any Government Agency Representative as directed by Maha-Metro and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement. The Concessionaire shall grant special access to the staff and authorised representative of Maha-Metro and other applicable local planning authorities.

10.6 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 Maha-Metro 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 Maha-Metro forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property.

ARTICLE 11 UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on, under or above the Site are enabled by it to keep such utilities in continuous satisfactory use.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws, 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.

11.3 New utilities and roads

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

11.4 Metro Alignment

The Nagpur Metro Rail running portion is passing through the project site. No permanent construction shall be allowed in metro corridor, i.e. 10 mts. on each side from the centre of metro alignment.

ARTICLE 12 CONSTRUCTION OF PROJECT

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- 12.1.1 Appoint its representative duly authorised to deal with Maha-Metro in respect of all matters under or arising out of or relating to this Agreement;
- 12.1.2 Submit to Maha-Metro its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project;
- 12.1.3 Submit, with reasonable promptness and in such sequence as is consistent with the development of the Project, the conceptual plans to Maha-Metro for review, within 180 (one hundred and eighty) days, or such mutually extended date, from the date of signing of Concession Agreement.
- 12.1.4 Upon approval of the Building Plans by Maha-Metro, the Concessionaire shall be responsible to develop the Project as per finalized designs and drawings approved by Maha-Metro.
- 12.1.5 The development shall be carried out as per the Unified Development Control and Promotion Regulations - 2020 as applicable, local by-laws and regulations, FSI Limits, latest amended National Building Code of India, Green Building Norms (IGBC/LEED Standards), statutory requirements, laws of land, other applicable Govt. rules/ regulations and the principles of good industry practices
- 12.1.6 Appoint its representative duly authorised to deal with Maha-Metro in respect of all matters under or arising out of or relating to this Agreement;
- 12.1.7 Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- 12.1.8 Make its own arrangements for removing of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.
- 12.1.9 Take all statutory approvals from the concerned statutory authorities. All mandatory charges, premium, fees and penalties if any with regards obtaining of such approvals shall be borne solely by the Concessionaire. It is to be clearly understood that all such clearances are to be obtained by the Concessionaire and the Maha-Metro may only provide assistance wherever possible without any binding obligation and;
- 12.1.10 Undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits;

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the Project and existing area of Project to ensure safety at site and shall undertake the necessary repair and maintenance works for this purpose.

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

12.3 Building Sanction

- 12.3.1 All communication in all matters regarding the approvals related to the subject Site shall be forwarded to the Town Planning Officer appointed by the Maha-Metro. The Officer In-charge shall act as a single window for the Concessionaire and shall be responsible for all the matters related to the Subject Site. Maha-Metro shall inform the details of Officer In Charge to the Concessionaire upon issuance of Letter of Award.
- 12.3.2 The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the development of the Project, the conceptual plans Maha-Metro for review, within 180 (one hundred and eighty) days from the date of issuance of the Letter of Award by Maha-Metro.
- 12.3.3 The Concessionaire shall submit the building plans and detail design to Maha-Metro for acceptance. Based on inputs and observations as suggested by the authority, the Concessionaire shall resubmit the final drawings. It is mandatory for Concessionaire to undertake construction of the Project as per IGBC regulations.
- 12.3.4 As a part of the Smart City Programme of Nagpur, there is a proposal of riverfront development at Nag River adjacent to the Project Site. It is mandatory for Concessionaire to coordinate with concerned riverfront development authority and propose the final proposal for the Project aligning with the riverfront development plan.
- 12.3.5 It shall be sole responsibility of the Concessionaire to take all statutory approvals from the concerned statutory authorities. All mandatory charges, premium, fees, penalties etc. if any, with regards obtaining of such approvals shall be borne solely by the Concessionaire. It is to be clearly understood that all such clearances are to be obtained by the Concessionaire and the Maha-Metro may only provide assistance wherever possible without any binding obligation.
- 12.3.6 The development shall be carried out as per the Unified Development Control and Promotion Regulations - 2020, Transit Oriented Development Policy for Nagpur City, local by-laws and regulations, FSI Limits, latest amended National Building Code of India, statutory requirements, laws of land, other applicable Govt. rules/ regulations and the

- principles of good industry practices. It is mandatory for Concessionaire to undertake construction of the Project as per IGBC regulations.
- 12.3.7 The maximum timeline for sanctioning of building plans shall be in accordance with the DCR of Nagpur City. As per UDCPR-2020, the time limit for sanctioning of building plans is 60 days. Beyond 60 days limit, the proposal shall be deemed to be sanctioned, only if the submitted proposal is as per the UDCPR – 2020.
- 12.3.8 Looking into the quantum of development of this site, the Fire NoC from NMC and Environmental Clearance will be mandatory for the project. Before issuing Final Approval, Maha-Metro shall provide tentative sanction to the proposal submitted, for its further submission to NMC for obtaining FIRE NOC and Environmental Clearance from competent authority. Maha-Metro shall issue the Final Approval to Building Plans only after submission of Fire NOC and Environmental Clearance Certificate to Maha-Metro.
- 12.3.9 Upon approval of Building Plans by Maha-Metro, the Concessionaire shall be responsible to develop the Project as per the approved plans.
- 12.3.10 The Concessionaire shall make fire-fighting arrangements of his own for the entire project. Such fire-fighting arrangements should conform to the National Building Code, Nagpur Building Bye-laws, Nagpur Fire Safety (Fire Prevention) Rules and all other applicable rules and its further amendments throughout the concession period.
- 12.3.11 The Lessee shall at all times adhere to all provisions of the Prevailing Metro Railway Acts and amendments thereto and shall also comply with all notices and circulars issued by Maha-Metro in this regard.
- 12.3.12 The Concessionaire shall provide sufficient parking its staff, visitors and General Public within the leased project site only. No additional parking shall be provided for the use of concessionaire, its staff and visitors outside the leased project site. The provision of minimum parking for the project shall be in accordance with the with the prevailing Development Control Rules of Nagpur City and approved TOD policy for Nagpur City. The Concessionaire shall be free to provide any number of parking over and above the aforesaid requirement.
- 12.3.13 In addition to the minimum required parking, the Concessionaire shall have to provide additional parking of 100 car bays, 100 two wheelers bays and 100 bicycles bays to address parking needs of Metro commuters. The said parking will be handed over to Maha-Metro free of any charges. The periodic maintenance of the parking will be done by the Concessionaire at its own cost.
- 12.3.14 The Concessionaire shall ensure that no part of building is projected outside the project site. Any such projections or part of building out site the project site shall be demolished

by the authority and no claims or damages will be entertained by Maha-Metro in this regards.

- 12.3.15 No construction shall be allowed in the metro corridor i.e. 10 mts on each side from the centre of metro alignment.
- 12.3.16 Maha-Metro has designed the façade and elevation for the Project. The existing façade has been designed keeping in consideration the vision of Maha-Metro, landscape of Nagpur and essential design principles.
- 12.3.17 The Concessionaire shall have the flexibility to propose a design as long as they adhere to the basic design principles considered by Maha-Metro. The design is available in Annexure-4 for the reference of the Concessionaire. In the event, the Concessionaire desires any change in the façade and elevation design, it should take prior approval from Maha-Metro for such change in façade and elevation design. Maha-Metro reserves the right to approve and disapprove such request.
- 12.3.18 It shall be mandatory for the Concessionaire to provide the side margins as per the UDCPR-2020, Final TOD policy and any other applicable norms within the project site.

12.4 Development/Construction of the Project

- 12.4.1 On or after the Effective Date, the Concessionaire shall undertake construction of the Project as specified in Schedule-B. The 4th Anniversary or 48 (Forty Eight) months from the Effective Date shall be the scheduled date for completion of Project (the "Scheduled Completion Date") and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date.
- 12.4.2 In the event that the Concessionaire fails to complete the Project on the Scheduled Completion date, unless such failure has occurred due to Force Majeure, it shall pay additional fees to Maha-Metro amounting to Rs. 5.00 Crores. The said additional fees/damages shall be levied on a pro-rata basis subject to a maximum of 100% (one hundred percent) of the amount for a delay in the completion of Project by 365 days.
- 12.4.3 In addition to the said amount the concessionaire shall pay to Maha-Metro the minimum guaranteed amount as applicable for the respective year.
- 12.4.4 In the event that Project is not completed within 365 (three hundred sixty-five) days from the Scheduled Completion Date, unless the delay is due to Force Majeure, Maha-Metro shall forfeit the Performance Security submitted for the Project and the agreement shall be entitled for termination.
- 12.4.5 Upon completion of the construction of the project, the Concessionaire shall inform Maha-Metro about completion of the construction. No payment shall be made to the Concessionaire towards the construction, operations and maintenance of the Project including any incidental charges as incurred by the Concessionaire for the construction/development of the Project.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 MIS Reports

During the Construction Period, the Concessionaire shall, no later than 30 (thirty) days after the close of each quarter, furnish to Maha-Metro a MIS Report on progress of the Construction Works and shall promptly give all such other relevant information in the report as may be required by Maha-Metro on time-to-time.

13.2 Suspension of unsafe Construction/Development Works

13.2.1 Maha-Metro may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of Maha-Metro, such work threatens the safety of the Users and pedestrians.

13.2.2 The Concessionaire shall, pursuant to the notice under Clause 13.2.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by Maha-Metro and thereupon carry out remedial measures to secure the safety of suspended works and the Users. Upon checking the safety measures undertaken by the Concessionaire, Maha-Metro 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 Maha-Metro.

13.2.3 If suspension of Construction Works is for reasons not attributable to the Concessionaire, Maha-Metro shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall accordingly extend such Project Completion Schedule dates. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

ARTICLE 14 CONSTRUCTION COMPLETION CERTIFICATE

14.1 Construction Completion Certificate

- 14.1.1 Upon satisfactory completion of the construction works, the Concessionaire shall have to avail the Construction Completion Certificate for the Project from Maha-Metro, who is also the special planning Authority for the Project. No payment shall be made by the Maha-Metro to the Concessionaire towards the construction, operations and maintenance of the Project including any incidental charges as incurred by the Concessionaire for the Construction/development of the Project.
- 14.1.2 The Occupancy certificate will be issued by Town Planning Officer/ Competent Authority of Maha-Metro.
- 14.1.3 The Concessionaire shall have to avail the Construction Completion Certificate from Maha-Metro before commencing Commercial Operations.
- 14.1.4 Maha-Metro shall allow for Commercial Operations of the Project only after availing the Construction Completion Certificate for the project.

14.2 Withholding of Construction Completion Certificate

- 14.2.1 If Maha-Metro determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Concessionaire. Upon receipt of such a report from the concerned Planning Authority/ Maha-Metro and after conducting its own inspection, if the concerned Planning Authority/ Maha-Metro is of the opinion that the Project is not fit and safe for commercial service, it shall, within 15 (fifteen) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and withhold the issuance of the Construction Completion Certificate. 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.

ARTICLE 15 ENTRY TO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Project shall be deemed to be complete when the Construction Completion Certificate is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Construction Completion Certificate is issued (the “**COD**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect User Charges from COD.

15.2 Damages for delay

If COD for the Project does not occur on the Scheduled Completion Date unless the delay is due to Force Majeure, the Concessionaire shall pay additional fees to Maha-Metro amounting to Rs. 5.00 Crores.

The said additional fees/damages shall be levied on a prorata basis subject to a maximum of 100% (one hundred percent) of the amount of Rs. 5.00 Crores for a delay in the completion of construction of Project within 365 days of scheduled completion date.

In addition to the said amount the concessionaire shall pay to Maha-Metro, as Annual Concession Fees, the minimum guaranteed amount as applicable for the respective year.

ARTICLE 16 OPERATION AND MAINTENANCE

16.1 O&M obligations of the Concessionaire

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

- (a) permitting safe, smooth and uninterrupted flow of visitors on the Project during normal operating conditions;
- (b) collecting and appropriating the User Charges;
- (c) undertaking routine maintenance including prompt repairs;
- (d) undertaking maintenance of equipment;
- (e) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project;
- (f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project;
- (g) protection of the environment and provision of equipment and materials therefore as required under applicable laws;
- (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- (i) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (j) complying with Safety Requirements in accordance with Article 17.

16.1.2 Prior to the Commercial Operation Date, the Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice-

16.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period of the Project conforms to the maintenance requirements. The Concessionaire shall repair or rectify any defect or deficiency occurred during Operation & Maintenance of the Project.

The obligations of the Concessionaire in respect of maintenance requirements shall include repair and rectification of the defects and deficiencies occurred during operation of the Project.

16.3 Safety, breakdowns and accidents

16.3.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

16.4 De-commissioning due to Emergency

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

16.4.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify Maha-Metro of the same without any delay.

16.4.3 Any decommissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

16.5 Maha-Metro's right to take remedial measures

16.5.1 In the event the Concessionaire does not maintain and/or repair the Project and such breach is causing or likely to cause the safety and security of a public at a large, Maha-Metro shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 25% (twenty five per cent) of such cost shall be paid by the Concessionaire to Maha-Metro as Damages /Overhead Expenses.

16.5.2 Maha-Metro shall have the right, and the Concessionaire hereby expressly grants to Maha-Metro the right, to recover the costs and Damages specified in Clause 16.5.1.

16.5.3 In case there is a difference of opinion between the Parties regarding the need for maintenance and/or repair, a mutually appointed independent professionals advise maybe

taken and cost to be mutually borne, provided however that the material amount is exceeding Rs. 100.00 Lakhs.

16.5.4 For material amount Below 100 Lakhs, if any dispute between Officer In-charge of Maha-Metro and the Concessionaire, then the matter will be taken presented before The Managing Director (MD), Maha-Metro or Competent Authority. The decision of MD, Maha-Metro / The Competent Authority will be final and binding.

16.6 Overriding powers of Maha-Metro

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

16.6.2 In the event that the Concessionaire, upon notice under Clause 16.6.1, fails to rectify or remove any hardship or danger within a reasonable period, Maha-Metro may exercise overriding powers under this Clause 16.6.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by Maha-Metro shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by Maha-Metro in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and Maha-Metro shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 16.5 along with the Damages specified therein.

16.6.3 In the event of a national emergency, civil commotion or any other act specified in Clause 16.4 above, Maha-Metro may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by Maha-Metro 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 Maha-Metro. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 26. It is also agreed that the Concessionaire shall comply with such instructions as Maha-Metro may issue in pursuance of the provisions of this Clause 16.6, and shall provide assistance and cooperation to Maha-Metro, on a best effort basis, for performance of its obligations hereunder.

16.7 Restoration of loss or damage to Project

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

16.8 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the specifications and standards, maintenance requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify Maha-Metro of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that Maha-Metro may make within 15 (fifteen) days of receiving the Concessionaire’s proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Applicable Laws and the provisions of this Agreement.

16.9 Excuse from performance of obligations

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

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

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

16.10 Advertising on the Site

The Concessionaire may undertake or permit any form of commercial advertising, display or hoarding at any place on the Site, except on the metro pillars and viaduct passing through the project site, subject to applicable laws and applicable permits.

16.11 Regulation of Visitor’s Flow

The Concessionaire shall take all possible measures to regulate and monitor the visitor’s flow on the site and also in surrounding area so as to avoid any stampede or untoward incidences. The Concessionaire shall submit to Maha-Metro details of the measures undertaken to avoid any stampede. Maha-Metro shall have right to ask the Concessionaire to take additional measures to avoid the possibility of stampedes.

The Concessionaire shall be responsible for security and order on the premises/ Project Site.

ARTICLE 17 SAFETY REQUIREMENTS

17.1 Safety Requirements

- 17.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements.
- 17.1.2 The Concessionaire shall monitor entry to Project premises/ Project Site and shall screen the baggage of the visitors. All persons, bags, luggage and parcels and any other items is subject to security check at the point of entry to the Project and at such other locations inside the Project as considered appropriate.
- 17.1.3 The Concessionaire shall provide multiple exit routes in case of any disaster.
- 17.1.4 The Concessionaire shall provide required fire services, emergency medical aid as per the international standards. The Concessionaire shall provide for public address system to flash emergency warning.

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, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16.

ARTICLE 18 MONITORING OF OPERATION AND MAINTENANCE

18.1 Reports of unusual occurrence

The Concessionaire shall, within 3 days of occurrence of an unusual event, send to Maha-Metro, by facsimile or e-mail, a report stating details of accidents and unusual occurrences on the Project site/premises, relating to the safety and security of the users/commuters and the Project. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month. For the purposes of this Clause 18.1, accidents and unusual occurrences on the Project shall include:

- (i) death or injury to any person;
- (ii) smoke or fire;
- (iii) flooding of Project; and
- (iv) such other relevant information as may be required by Maha-Metro.

ARTICLE 19 EMERGENCY MEDICAL AID

19.1 Medical Aid Posts

For providing emergency medical aid during the Concession Period, the Concessionaire shall make provision of medical aid post at his own cost and expense (the “**Medical Aid Post**”) at Project Site.

Part IV- Financial Covenants

ARTICLE 20 CONSIDERATION

The Consideration shall consist of the Upfront Premium and Annual Concession Fee, as quoted by the Concessionaire in its Financial Bid, payable as per the terms of the Concession Agreement.

20.1 Fixed Upfront Premium

20.1.1 The Concessionaire has paid the Fixed Upfront Premium amounting to Rs. 20,00,00,000/- (Rupees Twenty Crores Only) vide reference no..... dated FromBank.

20.2 Annual Concession Fee

20.2.1 Without prejudice to the provisions of Clause 20.2, every year the Concessionaire agrees to pay to Maha-Metro an Annual Concession Fee in the form of percentage (%) of Project Revenue (the "**Revenue Share**") or the minimum guarantee amount (determined as per Clause 20.2.2), which-ever is higher.

(Note : "Project Revenue" shall refer to and mean all the monies (Gross) received by the Concessionaire, excluding GST, pursuant or incidental to –

- (a) the Sub-Lease of proposed space in Project Facilities and Project Utilities*
- (b) exploitation in any permitted manner of the Site, Project Facilities and Project Utilities by any person, whether at the instance of the Concessionaire or the Sub-Lessee, including but not limited to capital receipts, upfront Sub- Lease payments, deposits, advances, registration payments, instalments received from Sub-Lessees, Sub-Lease charges, and shall also include the revenue earned pursuant to the services provided or to be provided by the Concessionaire to the Sub-Lessees or any person exploiting in any manner whatsoever the Project Facilities and Project Utilities;*
- (c) all receipts from parking of vehicles, display, signage, play area, events, road shows, promotional activity, hoardings, kiosks, advertisements and counters etc.)*

20.2.2 The amount equivalent to hundred (100%) percent of the amount of the Annual Concession Fees computed based on the Detailed Business Plan submitted by the Concessionaire at the time of submission of bid, shall act as Minimum Guaranteed Annual Concession Fees (the "**Minimum Guaranteed Amount**").

20.2.3 The revenue sharing shall be done on the Total "**Project Revenue**" accrued to the concessionaire.

20.2.4 The Annual Concession Fees shall commence immediately at the end of moratorium period (i.e. at the beginning of 48th month from the date of signing of Concession

Agreement or an earlier date committed by the concessionaire in Financial Bid) and shall be paid thereafter till the end of lease period.

20.2.5 The Annual Concession Fees shall be paid on half-yearly basis and shall be paid immediately after the completion of the half yearly tenure.

20.2.6 At the end of each half year of agreement year the amount of Annual Concession Fees will be reconciled based on the revenue received in the project during that tenure. It will be mandatory for the Successful Bidder/Concessionaire to submit the amount of half yearly license fees within 15 days of completion of such tenure.

20.2.7 Within 60 (sixty) days from the end of each financial year, the Concessionaire shall submit to Maha-Metro a report from its internal auditor certifying the Project Revenues during the financial year. Upon submission of the certified Project Revenue, Maha-Metro shall rework the Annual Concession Fees based on the actual amount paid to Maha Metro during the financial year against the higher of Minimum Guaranteed Amount or the “.....” Percentage (%) of Project Revenue, duly certified by the Internal Auditor of the Concessionaire. The difference of Annual Concession Fees (if any) shall be paid by the Concessionaire within 15 days of issuance of Demand by Maha-Metro.

20.2.8 Notwithstanding the provisions of the Clause 20.2.7, Maha-Metro shall have the right, but not the obligation, to appoint its own auditor to ascertain the Project Revenues in any financial year. If the result of the audit by Maha-Metro’s auditor shows underreporting of Project Revenues by the Concessionaire, the incremental Annual Concession Fee due and the cost of the auditor will be recovered by Maha Metro from the Concessionaire along with a penalty calculated at the rate of 15% per annum calculated from the date on which the Annual Concession Fee payment was due to the date of actual payment of Annual Concession Fee. If Maha-Metro’s auditor finds that the Project Revenues reported by the Concessionaire are in order, the cost of the auditor shall be borne entirely by Maha-Metro.

20.2.9 The Annual Concession Fees shall be paid in the form of NEFT/RTGS/Online Transfer /Cheque in Bank Account of Maha-Metro. The bank account details of Maha-Metro are as follows –

Name of Beneficiary – Maharashtra Metro Rail Corporation Ltd., Nagpur

Bank Account Number -

IFSC Code -

Name of Branch -

20.2.10 Failure to pay the Annual Concession Fee on due date shall attract interest @ “Prevailing State Bank of India MCLR (+) plus 3%” interest per annum for the unpaid

period up to 90 (ninety) days. If the Annual Concession Fee remains unpaid for a period exceeding 90 (ninety) days from the due date, Maha-Metro shall recover amount of Annual Concession Fee from the Security Deposit submitted by the Concessionaire. Upon such encashment and appropriation from the Security Deposit submitted as a security against the payment, the Concessionaire shall, within 30 (thirty) days thereof, provide a fresh the Security Deposit for amount equivalent to the amount of the Security Deposit, as encashed by Maha-Metro for the payment of Annual Concession Fees. Unable to provide the Security Deposit within 30 days period shall make the Agreement liable for termination.

20.2.11 In case, the Concessionaire makes default in payment of **Annual Concession Fee for 06 (six) times** during the entire Concession Period, the Concession Agreement shall be liable for termination as per the provision of ARTICLE 27 TERMINATION& SUBSTITUTION of this Agreement.

20.2.12 Considering the Revenue Sharing mechanism, any revenue generate by Concessionaire during the entire Concession Period of 60 years shall attract payment of Annual Concession Fees on proportionate basis.

20.2.13 In the concessionaire avails the part occupancy for the project during the initial construction period of 04 years, the Annual Concession Fees shall commence from the date of obtaining the part Occupancy certificate, and from the same day the moratorium period shall be considered as officially closed/finished.

20.2.14 Till the date Concessionaire is operating the project, all revenues shall accrue to the Concessionaire, however, the revenue shall continue to accrue in the separate mall account i.e. the Escrow Account mechanism opted for the project.

20.3 Taxes and Penalties

20.3.1 The Concessionaire shall have to pay all central/state/local govt. Taxes, cess and levies such as Non Agriculture Tax, Water Bills, Electric Bills, GST, Royalty etc. during the Concession Period. Any new levies, taxes, cess etc. if any, imposed by Government Authorities on Maha-Metro for awarding the Project shall be recovered from the Concessionaire separately by Maha-Metro.

20.3.2 The annual property tax /municipal tax, as applicable, shall be paid by Concessionaire, on behalf of Maha-Metro during the term of this Agreement.

20.3.3 The Concessionaire shall be solely responsible to pay all applicable International Taxes and shall bear all cost and expenses for various compliances with respect to FEMA/FERA regulations.

20.3.4 Other charges as applicable and detailed in the Concession Agreement shall have to be borne by the Concessionaire.

20.4 Payments Security & Escrow Accounts

20.4.1 The Concessionaire will be required to maintain an Escrow Account with a Scheduled Commercial Bank, acceptable to Maha-Metro, as a payment security mechanism to protect the interest of Maha-Metro. All the Project Revenues shall be credited to this account and outflows of cash on account of payments to Maha-Metro and other purposes shall be debited, in accordance with the provisions of the Concession Agreement.

20.4.2 Within 2 months from the date of signing of the Concession Agreement, the Concessionaire shall identify a Nationalised/ Scheduled Bank acceptable to Maha-Metro and open the Escrow Account in terms of the Escrow Agreement to be signed between the Concessionaire, Maha-Metro and the Bank. The draft of the Escrow Agreement is annexed as Schedule B to the Draft Concession Agreement in this tender. The Escrow Bank will act as the Escrow agent for the purposes of receiving the receivables. The escrow account will be maintained throughout the Lease period. (iii) For the payment of the amounts becoming due to it, Maha-Metro shall always have the first and paramount charge over all receivables that the lessee is entitled to claim or receive from the sub-licensee for the use of the leased Spaces. The Escrow Bank shall be given irrevocable instruction to remit to Maha-Metro the amounts becoming due to Maha-Metro under the Concession Agreement as per the claims made by Maha-Metro from time to time. So long as any amount is outstanding to Maha-Metro from the Concessionaire, the amounts in the Escrow Account shall not be utilised for any purpose other than for payment to Maha-Metro. After due discharge of all amounts outstanding to Maha-Metro, the Escrow Bank shall be entitled to allow the amount to be utilised by the Concessionaire till such time further amounts become due from the Concessionaire to Maha-Metro as per the claims made by Maha-Metro. Subject to the above and to the first and paramount charge, Maha-Metro may allow the Concessionaire to create second charge over the receivables in favour of financial institutions.

Maha-Metro shall always have the first charge over the project receivables, however the said shall be limited to the extent of amount to be received by Maha-Metro in that respective year.

20.5 Related Party Transactions

20.5.1 The Concessionaire shall enter into any Related Party Transaction only after obtaining approval of Maha-Metro in writing. Any amendment/ modification in the terms and conditions of the Related Party Transaction shall also require prior approval of Maha-Metro.

ARTICLE 21 REVENUE

21.1 Collection and appropriation of Revenue

On and from the Commercial Operations Date (“COD”) till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate revenue from the Project, including but not limited to Project Revenues.

ARTICLE 22 INSURANCE

22.1 Insurance during Concession Period

22.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such adequate sums as may be required under the Applicable Laws, and such insurances (including building insurance) 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 Maha-Metro as a consequence of any act or omission of the Concessionaire during the Construction Period.

22.2 Notice to Maha-Metro

22.2.1 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 Maha-Metro, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 22 Within 30 (thirty) days of receipt of such notice, Maha-Metro may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

22.3 Evidence of Insurance Cover

22.3.1 All insurances obtained by the Concessionaire in accordance with this Article 22 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 Maha-Metro, 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 Maha-Metro.

22.4 Remedy for failure to insure

22.4.1 If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, Maha-Metro shall have the option to either keep in force any such insurances, and pay such premia and recover the costs , at actuals, thereof from the Concessionaire, or in the event of computation of a Termination Payment, deduct the amount so paid for insurance on behalf of the Concessionaire.

22.5 Waiver of subrogation

22.5.1 All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 22 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, Maha-Metro, 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.

22.6 Concessionaire's waiver

22.6.1 The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, Maha-Metro 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.

22.7 Application of insurance proceeds

22.7.1 The proceeds from all insurance claims, except life and injury, shall apply such proceeds 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.

ARTICLE 23 ACCOUNTS AND AUDIT

23.1.1 The Concessionaire shall maintain books of accounts recording its income, expenditure, receipts and payments, and assets and liabilities in accordance with Applicable Law. Upon written request by Maha-Metro and/or any Govt. Organizations, it shall provide to Maha-Metro and/or Govt. Organizations two (2) copies of its Audited Annual accounts including the balance sheet and profit and loss account audited by its statutory auditors alongwith Annual report thereon, as soon as reasonably available.

Part V- Force Majeure and Termination

ARTICLE 24 FORCE MAJEURE

24.1 Force Majeure

As used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any of the events hereunder, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 21 (twenty one) days and an aggregate period exceeding 60 (sixty) days in an Accounting Year;
- (c) the discovery of geological conditions or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (d) an act of war, invasion, armed conflict or act of foreign enemy, blockade, embargo, terrorist or military action, civil commotion;
- (e) Change in Law, which does not allow the normal operations of the Concession Agreement;
- (f) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

24.2 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 24 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

24.2.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 48 (forty eight) hours after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

24.2.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 24.2.1, and such other information as the other Party may reasonably request the Affected Party to provide.

24.3 Effect of Force Majeure Event on the Concession

24.3.1 Upon the occurrence of any Force Majeure Event prior to the Effective Date, the period set forth in this agreement shall be extended by a period equal in length to the duration of the Force Majeure Event.

24.3.2 At any time after the Effective Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the period set forth for start of Commercial Operation Date shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to operate and maintain the premises despite making best efforts during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of sub-lease rentals from sub-lessees.

24.4 Allocation of costs arising out of Force Majeure

24.4.1 Upon occurrence of any Force Majeure Event during the Concession Period, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

24.4.2 Save and except as expressly provided in this Article 24, 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.

24.5 Dispute resolution

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

ARTICLE 25 COMPENSATION FOR BREACH OF AGREEMENT

25.1 Compensation for default by the Concessionaire

- 25.1.1 Subject to the provisions of Clause 25.1, in the event of the Concessionaire being in material default or breach of this Agreement, save and except in case such default is due to Force Majeure, it shall pay to Maha-Metro by way of compensation, all direct costs suffered or incurred by Maha-Metro as a consequence of such material 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 25.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by Maha-Metro.
- 25.1.2 Subject to the provisions of Clause 25.1.1, in the event that a material default causes delay in achieving COD or leads to suspension of or reduction in operation and maintenance of the project, save and except in case such default is due to Force Majeure, Maha-Metro shall be at liberty to terminate the agreement or ask for compensation from the concessionaire.

25.2 Mitigation of costs and damage

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

ARTICLE 26 SUSPENSION OF CONCESSIONAIRE'S RIGHTS

26.1 Suspension upon Concessionaire Default

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

26.2 Revocation of Suspension

- 26.2.1 In the event that the Concessionaire shall have rectified or removed the cause of Suspension within a period as mentioned in clause 26.1 above, Maha-Metro shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that Maha-Metro may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.
- 26.2.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, Maha-Metro shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

26.3 Termination

- 26.3.1 At any time during the period of Suspension under this Article 26, the Concessionaire may request to Maha-Metro to revoke the Suspension and issue a Termination Notice.
- 26.3.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 26.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by Maha-Metro upon occurrence of a Concessionaire Default.

ARTICLE 27 TERMINATION& SUBSTITUTION

27.1 Termination

The Agreement may be terminated prior to the expiry in accordance with the following:

- (a) **Public Purpose:** By Maha-Metro at its discretion may terminate the agreement if the subject land is required for any public purpose;
- (b) By Maha-Metro upon the occurrence of Concessionaire Default in accordance with Article 27.2;
- (c) By the Concessionaire upon the occurrence of an Maha-Metro Default in accordance with Clause **Error! Reference source not found.** of Article 4;
- (d) By the Parties with mutual consent.

27.1.1 Termination by Maha-Metro (Public Purpose)

- (a) Without prejudice to the right of Maha-Metro to terminate the Agreement in accordance with Article 27.1.2 below, on account of the Concessionaire Default, Maha-Metro shall, at any time after the right of way/ access to Site or part thereof having been provided by Maha-Metro to the Concessionaire, be entitled to determine and terminate the Agreement, where the Site is required for use of Maha-Metro or for Public purpose.
- (b) In such event, notwithstanding anything to the contrary, Maha-Metro shall be entitled to determine and terminate the Agreement by giving a [60 (sixty) days] termination notice, and the provisions of Article 26.3, shall not be applicable to any such termination, and Maha-Metro shall not be required to the Notice of Intention to Terminate, in respect of such termination. Further, it is clarified that the Lenders shall not have any right to substitute the Concessionaire, in respect of any termination pursuant to this Clause 27.1.1.

27.1.2 Termination by Maha-Metro for Concessionaire Default

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

- (a) the Performance Security and/or Security Deposit has been encashed and

- appropriated in accordance with Clause 9.3 and the Concessionaire fails to replenish or provide fresh Performance Security and/or Security Deposit within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security and/or Security Deposit in accordance with Clause 9.3, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security and/or Security Deposit was appropriated;
 - (c) the Concessionaire has made default in payment of Annual Concession Fee for 06 (six) times during the entire Concession Period;
 - (d) the Concessionaire has made default in payment of Annual Concession Fee for consecutive 4 (Four) times during the entire Concession Period;
 - (e) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of Maha-Metro;
 - (f) Project Completion Date does not occur within the period specified in Clause 12.4.4;
 - (g) the Concessionaire is in breach of the Safety Requirements as required for the operation and maintenance of the Project;
 - (h) the Concessionaire has failed to make any payment to Maha-Metro within the period specified in this Agreement and remains in default for a period of 90 (ninety) days from the due date of payment;
 - (i) upon occurrence of a Financial Default, the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
 - (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
 - (k) the Concessionaire creates any Encumbrance in breach of this Agreement;
 - (l) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
 - (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
 - (n) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
 - (o) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

- (p) 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;
- (q) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of Maha-Metro, a Material Adverse Effect;
- (r) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Effective Date ; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (s) 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;
- (t) the Concessionaire submits to Maha-Metro any statement, notice or other document, in written or electronic form, which has a material effect on Maha-Metro's rights, obligations or interests and which is false in material particulars;
- (u) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (v) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on Maha-Metro.
- (w) creates un-authorized infringement of metro property.
- (x) Creates hindrance to metro services & normal metro business.
- (y) Indulgence of Concessionaire or Sub-Lessee in unlawful activities which is

banned, punishable & threat to masses as per law of the land.

(z) executes any related party transaction without prior approval of Maha-Metro.

Without prejudice to any other rights or remedies which Maha-Metro may have under this Agreement, upon occurrence of a Concessionaire Default, Maha-Metro shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, Maha-Metro 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 27.1.

27.1.3 Termination by Concessionaire on Maha-Metro Default

(a) In the event that any of the following events of default, shall have occurred, Maha-Metro shall be deemed to be in default of the Agreement ("**Maha-Metro Default**"), save and except to the extent that the same is attributable to a Force Majeure Event and/ or a Concessionaire Default. The defaults referred to above shall mean the following default of obligations of Maha-Metro under the Agreement:

i. Maha-Metro fails to provide to the Concessionaire the vacant and peaceful possession of the Site, even after six months of extension in terms of the Agreement; or

(b) The Concessionaire shall, upon the occurrence of an Maha-Metro Default, which, is not remedied within the 30 (Thirty) days upon receipt of Notice of Intention to Terminate from the Concessionaire, be entitled to terminate the Agreement.

27.1.4 Termination Due to occurrence of Force Majeure event.

Without prejudice to any other rights or remedies available under this Agreement, the Agreement may be terminated through mutual consent of parties upon occurrence and continued persistence beyond 180 (one hundred eighty) days of a Force Majeure Event as mentioned in Article 24.

27.2 Substitution of the Concessionaire

27.2.1 Substitution by Lenders' Representative

In the event of Concessionaire Default which is not rectified within the defined time limit, Maha-Metro shall, if there be any Lenders, send a copy of the Termination Notice to the Lenders' Representative to inform 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 case Maha-Metro receives a representation on behalf of the Lenders, within the aforesaid period, Maha-Metro shall withhold the termination for a period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders’ Representative to exercise the Lenders’ right of substitution in accordance with the Substitution Agreement, and substitute the Concessionaire with a Nominated Company.

The nomination by Lender’s shall not be rejected for reasons other than non-fulfillment of eligibility criteria stated in the RFP Document, provided that “Any entity/novatee (the Novatee, its Member, or Associate was, either by itself or as Member of a consortium) which has been barred by the Central Government / State Government or any entity Controlled by it, from participating in any project (BOT, BOOT, DBFOT or otherwise) and where the bar subsists as on the Date of Novation, or has been declared by the Maha-Metro as non-performer/blacklisted would not be eligible to submit its application for Novation, either individually or as Member of a Consortium.

27.2.2 Termination by Maha-Metro in case of non-substitution

In the event that no company is nominated by the Lender’s Representative to act as the Nominated Company or the company nominated by the Lenders’ Representative in terms of Clause 27.2.1 is not acceptable to Maha-Metro, Maha-Metro shall terminate the agreement with the Concessionaire.

27.2.3 Substitution Process

While carrying out substitution, the Lender’s Representative or Maha-Metro, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Concessionaire.

The financial bidding criteria for the bid shall be a Substitution Premium to be paid by the Nominated Company as a consideration to Maha-Metro. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Concessionaire in terms of the Agreement, Financing Agreement, Letter of Allotment/Sub-Leasing Agreements and sub-contracts with the Sub-Contractors, and which shall include but not be limited to overdue and future payments towards taxes to be paid to any Government (State Govt. and Central Government), Premium to be paid to Maha-Metro, Annual Concession Fees to be paid to Maha-Metro, repayment or refunds to third parties, liquidated damages to be paid to Maha-Metro, payment to Sub-Contractors relating to the Project, expenses incurred and claims by Maha-Metro on the Project due to the Concessionaire Default in terms of the Agreement to be paid to Maha-Metro, servicing of Debt Due to the Lenders etc. Moreover, as part of the

condition of bidding, the Nominated Company shall be required to invest an additional minimum amount in the Project within 30 days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified here above.

27.2.4 Consequences of Substitution

- (i) Maha-Metro shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Concessionaire under this Agreement, subject to fulfilment of all the Concessionaire's obligation under this Agreement by such Nominated Company, for the remaining Concession Period. Such rights shall be granted by Maha-Metro through the Novation of the Agreement, if applicable, in favour of the Nominated Company. Maha-Metro shall also execute a new Substitution Agreement with the Nominated Company and the Lenders, if there be any.
- (ii) All Sub-Contracts and agreements in respect of the Project and all Sub-Contracts executed by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Concessionaire on the Project Site, Project Assets and Project Facilities in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/clearances of Maha-Metro received by the Concessionaire shall stand transferred and novated in favour of the Nominated Company. All letter of allotments, sub-lease deeds or any other agreements executed by the Concessionaire for marketing the Project in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. The Concessionaire shall get replaced by the Nominated Company for all purposes related to the Project.
- (iii) The project liabilities including performance of contracts shall be transferred to the nominee/ Maha-Metro from the effective date of termination or the date upto which Concessionaire was requested to operate the Project, whichever is later.

27.3 Termination Payment and Substitution Payment

27.3.1 Termination Payment

In the event of termination of the Agreement, the Termination Payment payable by Maha-Metro to the Concessionaire shall be determined as follows:

(a) Termination by Maha-Metro for public purpose or pursuant to Maha-Metro Default:

In the event of any termination by Maha-Metro pursuant to Clause 27.1.1 (termination by Maha-Metro for public purpose) or pursuant to Maha-Metro's default as stated under Clause 27.1.3 (Termination by Concessionaire on Maha-Metro

Default), the compensation payable by the Concessioneing Authority shall be equal to the aggregate of –

- i. Debt Due plus
- ii. 150% (one hundred and fifty percent) Equity.

(b) Termination by Maha-Metro pursuant to Concessionaire event of Default

In the event of any termination by Maha-Metro pursuant to Clause 27.1.2 (Termination by Maha-Metro for Concessionaire Default), Maha-Metro shall pay to the Concessionaire, as Termination Payment, an amount determined as under:

If the termination is after the Date of Commercial Operation, due to a Concessionaire Event of Default, the compensation payable by Maha-Metro to the Concessionaire shall be the lowest of:

- a) the Book Value;
- b) 90% (ninety percent) of Debt Due;
- c) the Total Project Cost;

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover as contemplated under Article 12 of this Agreement.

For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire's Default occurring prior to COD.

(c) Termination due to Force Majeure

In the event of any termination by mutual consent of Parties pursuant to Clause 27.1.4 (Termination due to Force Majeure), the compensation payable to the Concessionaire **shall be the lower of the Book Value or the Debt Due** LESS any amount due to the Maha-Metro by the Concessionaire under this Agreement LESS all insurance claims received or admitted.

For purpose of Termination the term Equity shall mean :-

"Equity" shall mean the sum expressed in Indian Rupees representing the paid up equity share capital in the SPC, and for the purposes of the Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the SPC;

27.4 Other rights and obligations of Maha-Metro

Upon Termination for any reason whatsoever, Maha-Metro shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 28 and
- (e) succeed upon election by Maha-Metro, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as Maha-Metro 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 Maha-Metro elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and Maha-Metro shall not in any manner be liable for such sums. It is further agreed that in the event Maha-Metro elects to cure any outstanding defaults under such Project Agreements, the amount expended by Maha-Metro for this purpose shall be deducted from the Termination Payment.

27.5 No Compensation on Expiry of Concession Period

In the event of expiry of Concession by efflux of time (the Concession having run its full course), the Concessionaire shall hand over/ transfer peaceful possession of the Project Site, all Assets and the Project Facilities and Services to Maha-Metro, free of cost and Encumbrance.

ARTICLE 28 DIVESTEMENT OF RIGHTS AND INTEREST

28.1 Divestment Requirements

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

- (a) notify to Maha-Metro forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances;
- (c) cure all Project Assets, including the road (internal or external, as applicable), structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to Maha-Metro free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as Maha-Metro may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to Maha-Metro, absolutely unto Maha-Metro or its nominee; and
- (a) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto Maha-Metro or to its nominee.

28.1.2 Subject to the exercise by Maha-Metro 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.

28.2 Inspection and cure

28.2.1 Maha-Metro shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the maintenance requirements. Defaults, if any, in the maintenance requirements shall be cured by the Concessionaire at its cost and the provisions of Article 29 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 28.

28.3 Cooperation and assistance on transfer of Project

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

28.3.2 The Parties shall provide to each other, 60 days 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 Maha-Metro, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

28.3.3 Maha-Metro shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 28.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

28.4 Vesting Certificate

28.4.1 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 Maha-Metro shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-G (the "**Vesting Certificate**"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in Maha-Metro

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 Maha-Metro or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

28.5 Divestment costs etc.

- 28.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of Maha-Metro 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 Maha-Metro.
- 28.5.2 In the event of any dispute relating to matters covered by and under this Article 28, the Dispute Resolution Procedure shall apply.

ARTICLE 29 DEFECTS LIABILITY AFTER TERMINATION

29.1 Liability for defects after Termination

29.1.1 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 Maha-Metro 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 Maha-Metro in this behalf, Maha-Metro 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 Maha-Metro hereunder shall be reimbursed by the Concessionaire to Maha-Metro within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, Maha-Metro shall be entitled to recover the same from Termination Payment payable to the Concessionaire.

Part VI- Other Provisions

ARTICLE 30 ASSIGNMENT AND CHARGES

30.1 Restrictions on assignment and charges

30.1.1 Subject to Clauses 30.2 and 30.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of Maha-Metro, which consent Maha-Metro shall be entitled to decline without assigning any reason. Provided that such consent shall not be unreasonably withheld and shall be given within 60 days.

30.1.2 Subject to the provisions of Clause 30.2, 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 Maha-Metro, which consent Maha-Metro shall be entitled to decline without assigning any reason.

30.2 Permitted assignment and charges

30.2.1 The restraints set forth in Clause 30.1 shall not apply to:

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

30.3 Assignment by Maha-Metro

30.3.1 Notwithstanding anything to the contrary contained in this Agreement, Maha-Metro 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 Maha-Metro, capable of fulfilling all of Maha-Metro's then outstanding obligations under this Agreement.

30.4 Novation

30.4.1 The Concessionaire will be allowed to novate the agreement after the Commercial Operation Date (COD) of the project. The Concessionaire shall submit the details of the proposed novatee along with its other qualifications (financial and technical capabilities) to Maha-Metro for its due approval. Such novation shall be subject to execution of proper documents (Document of Deed of Adherence) by the proposed novatee. Maha-Metro shall reserve the right to reject any novation at any time.

30.4.2 At the time of novation, the Concessionaire shall pay to Maha-Metro, the amount (novation payment) equal to 50% of difference between Value of Land as per Annual Schedule of Rates prevailing at the time of Novation and Value of Land as per Annual Schedule of Rates prevailing at the time of signing of Concession Agreement).

Dilution of more than 1% of the subscribed and paid up equity of the SPC shall attract clauses related to Novation and novation payment as stated in Clause No. 30.4. The Novation payment shall be in proportion to the equity dilution and shall be applicable throughout the lease period.

30.4.3 There shall be no restrictions on number of Novation, however on every instance, the same shall attract Novation Payment as per Clause 30.4.2 above.

30.4.4 The conditions of Novation and Novation Payment shall be applicable throughout the lease period and shall be Novation Payment shall be paid whenever more than 1% of the equity of the SPV is transferred.

ARTICLE 31 LIABILITY AND INDEMNITY

31.1 General Indemnity

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

31.2 Indemnity by the Concessionaire

31.2.1 Without limiting the generality of Clause 31.1, the Concessionaire shall fully indemnify, hold harmless and defend Maha-Metro and Maha-Metro Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

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

31.2.2 Without limiting the generality of the provisions of this Article 31, the Concessionaire shall fully indemnify, hold harmless and defend Maha-Metro Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which Maha-Metro Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any

materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Maha-Metro a licence, at no cost to Maha-Metro, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

31.3 Notice and contest of claims

31.3.1 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 31 (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.

31.4 Defence of claims

31.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 33, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for

the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

31.4.2 If the Indemnifying Party has exercised its rights under Clause 31.3, 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).

31.4.3 If the Indemnifying Party exercises its rights under Clause 31.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

- (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 31.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

31.5 No consequential claims

31.5.1 Notwithstanding anything to the contrary contained in this Article 31, 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.

31.6 Survival on Termination

31.6.1 The provisions of this Article 31 shall survive Termination.

ARTICLE 32 RIGHTS AND TITLE OVER THE SITE

32.1 Lessee rights

32.1.1 For the purpose of this Agreement, the Concessionaire shall have rights to the use of the Site as sole 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.

32.2 Access rights of Maha-Metro and others

32.2.1 The Concessionaire shall allow free access to the Site at all times, for the authorised representatives and vehicles of Maha-Metro, Senior Lenders, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or 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.

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

32.3 Property taxes

32.3.1 The Property Taxes as and when applicable shall be borne solely by the Concessionaire. The annual property tax /municipal tax shall be paid by Concessionaire directly to the local authority. Upon Payment of the property taxes/ municipal taxes, the Concessionaire shall promptly submit the receipts of taxes paid to Maha-Metro office.

32.3.2 In the event if the Property taxes are kept unpaid by the Concessionaire for more than 90 days of the due date, the Concessionaire shall be liable to pay penalty of 25% of amount due plus interest applicable @ SBI base Rate plus 3%. The penalty amount shall be deducted/forfeited from the Performance Security and/or Security Deposit submitted by the Concessionaire.

ARTICLE 33 DISPUTE RESOLUTION

33.1 Dispute resolution

- 33.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 33.4.
- 33.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 33.1.3 No legal action till the Dispute settlement procedure is exhausted : Any and all dispute shall be settled in accordance with the provisions of clause 33.3. No action of law concerning or arising out of any dispute shall be commenced unless and until all applicable Dispute Resolution Procedures set out in clause 33.3 shall have been fully exhausted in relation to that dispute.

33.2 Notice of Dispute

- 33.2.1 For the purpose of Sub-Clause (i), a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of Dispute provided that no such notice shall be served later than 30 days after the date of completion of Concesssion period or earlier termination, as the case may be.

33.3 Two stages of dispute resolution

- 33.3.1 Dispute shall be settled through two stages:
- a) Conciliation procedure as established by the Arbitration and Conciliation Act, 1996 & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and Arbitration & Conciliation (Amendment) Act, 2019 and any statutory modification or re-enactment thereof and in accordance with this Clause. In the event this procedure fails to resolve the dispute then;
 - b) Arbitration procedure undertaken as provided by the Arbitration and Conciliation Act, 1996 & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and Arbitration & Conciliation (Amendment) Act, 2019 and any statutory modification or re-enactment thereof and in accordance with this Clause.

33.4 Conciliation

- 33.4.1 Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute for Conciliation.
- 33.4.2 Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If this invitation is not accepted then the Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.
- 33.4.3 The Conciliation shall be undertaken by Conciliator(s) selected from the panel of Conciliators. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.
- 33.4.4 Conciliation procedure
- 33.4.4.1 Maha-Metro shall maintain a panel of Conciliator, who shall be from serving or retired Engineers/Financial Experts/Legal Experts of Government Departments or of Public Sector Undertakings. Out of this panel, a list of three Conciliator shall sent to the Concessionaire who shall choose one of them to act as Conciliator and conduct Conciliation proceedings in accordance with Arbitration and Conciliation Act, 1996 & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof.
- 33.4.4.2 There will be no objection if Conciliator so nominated is a serving employee of Maha-Metro, who would be General Manager level officer and above.
- 33.4.4.3 Maha-Metro and the Concessionaire shall in good faith co-operate with the conciliator and in particular shall endeavour to comply with the requests by the conciliator to submit written materials, provide evidence and attend meetings.
- 33.4.4.4 Each party may on his own initiatives, or at the initiative of the conciliator, submit to the Conciliator suggestions for the settlement of the dispute.
- 33.4.4.5 When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- 33.4.4.6 If the Parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up or assist the parties in drawing up a settlement

agreement. When the parties sign the settlement agreement, it shall be final and binding on the parties and the persons claiming under them respectively.

33.4.4.7 The conciliator shall authenticate the settlement agreement and serve a copy thereof to each of the parties. As far as possible, Conciliation proceedings should be completed within 60 days of the receipt of notice by the conciliator.

33.4.4.8 The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings

33.4.5 Termination of conciliation proceedings

33.4.5.1 The conciliation proceedings shall be terminated:

- By the signing of settlement agreement by the parties on the date of agreement.
- By written declaration of the conciliator, after consultation of the parties, to the effect further efforts at conciliation is no longer justified on the date of declaration; or
- By a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- By a written declaration of one party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

33.4.5.2 Upon termination of the conciliation proceedings, the conciliator shall fix the costs of conciliation and give written notice thereof to the parties. The costs shall be borne equally by the parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

33.5 Arbitration

33.5.1 If the effort to resolve all or any of the disputes through Conciliation fails, then such disputes or differences, whatsoever arises between the parties, shall be referred to Arbitration in accordance with the following provisions.

- a) Only such dispute(s) or difference(s) in respect of which notice has been made under clause 33.2.1, but could not be settled through conciliation, together with counter claims or set off, shall be referred to arbitration. Other matters shall not be referred in arbitration.

- b) The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for Arbitration is received by the Office of Managing Director, Maharashtra Metro Rail Corporation Ltd., Civil Lines, Nagpur - 01.
- c) The disputes so referred to arbitration shall be settled in accordance with the Arbitration and Conciliation Act, 1996 & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and Arbitration & Conciliation (Amendment) Act, 2019 including amendments thereof.

33.5.2 Number of Arbitrations: The Arbitral Tribunal shall consist of:

- i. Sole Arbitrator in cases where the total value of all claims in question added together does not exceed Rs. 2.00 crores;
- ii. 3(Three) Arbitrators in all other cases.

33.5.3 Procedure for Appointment of Arbitrators: The Arbitrators shall be appointed as per following procedure:

- i) In case of Sole Arbitrator: Within 60 days from the day when a written and valid demand for arbitration is received by MD/ Maha Metro, Maha Metro will forward a panel of 03 names to the Concessionaire. The Concessionaire shall have to choose one Arbitrator from the panel of three, to be appointed as Sole Arbitrator within 30 days of dispatch of the request by the Maha Metro. In case the Concessionaire fails to choose one Arbitrator within 30 days of dispatch of panel of arbitrators by Maha Metro then MD/Maha Metro shall appoint anyone Arbitrator from the panel of 03 Arbitrator as Sole Arbitrator.
- ii) In case of 03 Arbitrators:
 - a) Within 60 days from the day when a written and valid demand for Arbitration is received by MD/Maha Metro, the Maha Metro will forward a panel of 5 names to the Concessionaire. The Concessionaire will then give his consent for any name out of the panel to be appointed as one of the Arbitrators within 30 days of dispatch of the request by the Maha Metro.
 - b) Maha Metro will decide the second Arbitrator. MD/ Maha Metro shall appoint the two Arbitrators, including the name of one Arbitrator for whom consent was given by the Concessionaire, within 30 days from the receipt of the consent for one name of the Arbitrator from the Concessionaire. In case the Concessionaire fails to give his consent within 30 days of dispatch of the request of the Maha Metro then MD/Maha Metro shall nominate both the Arbitrators from the panel.
 - c) The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties out of the panel of 05 Arbitrators provided to Concessionaire of

from the larger panel of Arbitrators to be provided to them by Maha Metro at the request of two appointed Arbitrators (if so desired by them) and who shall act as Presiding Arbitrator. In case of failure of the two appointed Arbitrators to reach upon consensus within a period of 30 days from their appointment, then upon the request of either or both parties, the Presiding Arbitrator shall be appointed by the Managing Director/ Maha Metro, Nagpur.

- d) If one or more of the Arbitrators appointed as above refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his / their office/ offices or is / are unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the MD/Maha Metro fails to act without undue delay, the MD/Maha Metro shall appoint new Arbitrator/ Arbitrators to act in his/ their place except in case of new Presiding Arbitrator who shall be chosen following the same procedure as mentioned in para (ii) (c) above. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator(s).
- e) The Maha Metro at the time of offering the panel of Arbitrator (s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Concessionaire.

33.5.4 Qualification and Experience of Arbitrators (to be appointed as per sub-clause above):

- a. The Arbitrators to be appointed shall have minimum qualification and experience as under:

Arbitrator shall be; a Working/ Retired Officer (not below E-8 grade in a PSU with which Maha -Metro has no business relationship) of any discipline of Engineering or Accounts/ Finance Department, having experience in Contract Management;

Or

A Retired Officer (retired not below the SAG level in Railways) of any Engineering Services of Indian Railways or Indian Railway Accounts Service, having experience in Contract Management; or a Retired Office who should have retired more than 3 years previously from the date of appointment as Arbitrator (retired not below E-8 grade in Maha Metro or a PSU with which Maha Metro has a business relationship) of any Engineering discipline or Accounts/ Finance Department, having experience in Contract Management or Retired Judge of any High Court or Supreme Court of India or reputed Chartered Accountant & should be member of ICAI, New Delhi. No person other than the persons appointed as per above

procedure and having above qualification and experience shall act as Arbitrator.

- 33.5.5 No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.
- 33.5.6 Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Conciliator for the purpose of obtaining his decision. No decision given by the Conciliator in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. Neither party shall be limited in the proceedings before such arbitrators to the evidence.
- 33.5.7 It is agreed by both the Parties that in the cases where Arbitral Tribunal is consist of sole Arbitrator, their disputes shall be resolved by fast track procedure specified in sub-section (3) of 29B of the Arbitration and Conciliation (Amendment) Act, 2015 or as amended up to date.
- 33.5.8 If the Concessionaire does not prefer his specific and final claims in writing, within a period of 90 days of receiving the intimation from the Maha Metro/ Conciliator that the final demand is ready, he will be deemed to have waived his claim(s) and the Maha Metro shall be discharged and released of all liabilities under the License Agreement in respect of these claims.
- 33.5.9 Arbitration proceedings shall be held at Nagpur, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English.
- 33.5.10 The Arbitral Tribunal should record day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. All Arbitration awards shall be in writing and shall state item wise, the sum and detailed reasons upon which it is based. A model time scheduled for conduct of Arbitration proceedings in a period of 180 days/365 days will be made available to Arbitral Tribunal for their guidance. Both the parties should endeavor to adhere to time scheduled for early finalization of Award.
- 33.5.11 The Award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties. Any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 33.5.12 A party may apply for correction of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a tribunal

and interpretation of specific point of award to tribunal within 60 days of the receipt of award party may apply to tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

33.5.13 Cost of Conciliation/ Arbitration

The fees and other charges of the Conciliator/ Arbitrators shall be as per the scales fixed by the Maha Metro from time to time irrespective of the fact whether the Arbitrator(s) is / are appointed by the Maha Metro or by the Court of law unless specifically directed by Hon'ble Court otherwise on the matter and shall be shared equally by the Maha Metro and the Concessionaire. However, the expenses incurred by each party in connection with the preparation, presentation will be borne by itself. The latest scale of fee & other charges fixed by Maha -Metro.

33.5.14 Jurisdiction of Courts and Language of Proceedings

Arbitration Proceedings shall be held in Nagpur and the language of the Arbitration Proceedings and that of all documents and communications between the parties shall English.

33.5.15 Interest on Arbitration Award

Where the Arbitral Award is for the payment of money, no interest shall be on any arbitration award.

33.5.16 Suspension of work/supplies on Account of Arbitration

The reference to conciliation/ Arbitration shall proceed notwithstanding that the lease period is complete, provided always that the obligation of the Concessionaire and Maha-Metro shall not be altered by reasons of arbitration being conducted. Neither party shall be entitled to suspend its duties to which the dispute relates on account of Arbitration and payments to Maha-Metro shall continue to be made in terms of the Agreement.

ARTICLE 34 DISCLOSURE

34.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the maintenance programme and (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days on the site and Concessionaire’s Registered Office. The Concessionaire shall prominently make the Specified Documents available for such inspection, and shall provide copies of the same to Maha-Metro, free of any charges.

34.2 Disclosure of Documents relating to safety

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

34.3 Notwithstanding the provisions of Clauses 34.1 and 34.2, Maha-Metro shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 34.1 and 34.2 , or portions thereof, the disclosure of which Maha-Metro is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 35 REDRESSAL OF PUBLIC GRIVANCES

35.1 Complaints Register

- i. The Concessionaire shall maintain a public relations office on 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 so as to bring it to the attention of all Users.
- ii. 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.

35.2 Redressal of complaints

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.

ARTICLE 36 MISCELLANEOUS

36.1 Governing law and jurisdiction

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

36.2 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 60 (Sixty) 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 "Prevailing State Bank Of India Base Rate (+) plus 3%" per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

36.3 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

36.4 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by Maha-Metro 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) Maha-Metro shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

36.5 Exclusion of implied warranties etc.

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

36.6 Survival

36.6.1 Termination shall:

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

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

36.7 Entire Agreement

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

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

36.9 No partnership

This Agreement is entered into on "Principal to Principal" basis. It 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.

36.10 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.

36.11 Successors and assigns

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

- a. 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.
- b. No legal action till the Dispute settlement procedure is exhausted : Any and all dispute shall be settled in accordance with the provisions of clause 33.3. No action of law concerning or arising out of any dispute shall be commenced unless and until all applicable Dispute Resolution Procedures set out in clause 33.3 shall have been fully exhausted in relation to that dispute.

36.12 Notices

Unless otherwise stated, all notices, approvals, instructions and other communications for the purposes of this Agreement shall be given in writing and may be given by facsimile, _____ by personal delivery or by sending the same by prepaid registered mail addressed to the Party _____ concerned at its address stated in the title of this Agreement or the fax numbers set out below and/or any other address subsequently notified to the other Parties for the

purposes of this clause 36.14 and shall be deemed to be effective (in the case of registered mail) 10 calendar days after posting, (in the case of facsimile) two Business Days after receipt of a transmission report confirming dispatch or (in the case of personal delivery) at the time of delivery

If to Maha-Metro:

Address : Maharashtra Metrorail Corporation Limited
**Metro Bhavan, VIP Road,
Opp. Dr. Babasaheb Ambedkar College,
Near Deekshabhoomi, Nagpur – 440010.**

Telephone : 0712 –

Fax :

Email :

Kind Attention :

Cc : **Maha-Metro Representative**

If to the Concessionaire

Name : M/s

Address : "....."

Telephone : 0712 –

Fax :

Mobile :

Attention :

36.13 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.

36.14 Counterparts

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

36.15 Assignment

Save and except otherwise permitted by the Agreement, Concessionaire shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under the 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)
(Name)
(Designation)

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

In the presence of:

- 1.
- 2.

§ To be affixed in accordance with the articles of association of the Concessionaire.

SCHEDULES

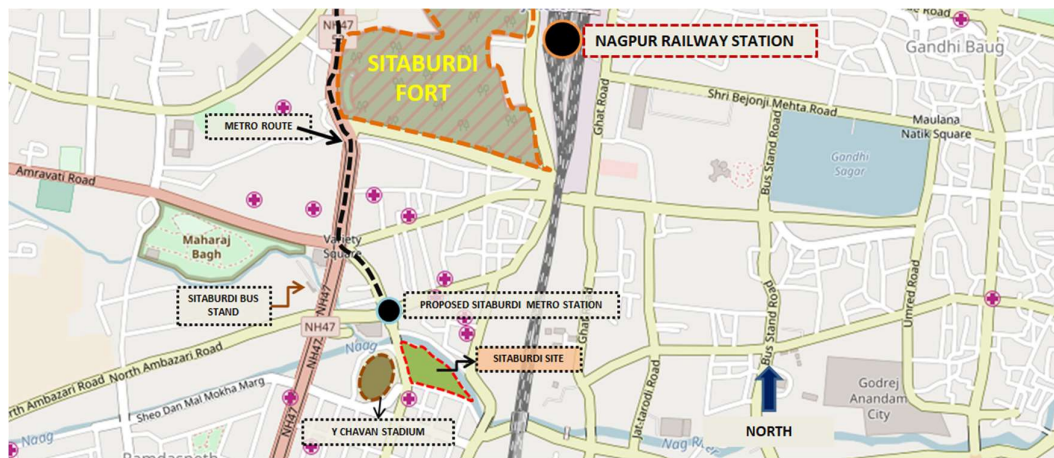
SCHEDULE -A SITE OF THE PROJECT

1. The Site

- 1.1. Site of the Project shall include the land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) Mz. Dhantoli and bearing CTS Number 09, near Sitaburdi Interchange Station of Nagpur Metro Rail Project”
- 1.2. The running portion of Nagpur Metro is passing through the project site.
- 1.3. An inventory of the Site including the land, buildings, structures, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by Maha-Metro Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.2.1 of the Agreement.

2. Area and Surrounding

Sitaburdi area is the city centre of Nagpur and is the major commercial centre for unorganized retail market. This area witnesses presence of prominent retail brands like Reebok, Nike, Bata, Tanishq, United Color of Benetton, Arrow, etc. This micro market has presence of several malls like Eternity Mall, Fortune Mall and an under construction Glocal Square mall along with unclassified hotels like Hotel President, Hotel Amruta, and Hotel Orange City. Currently Hotel Hardeo is the only 3 star hotel in the micro market.



Sitaburdi site is located adjacent to Yashvantrao Chavan stadium and. River Nag flows along the site. It can be accessed from Munje Chowk from North and from a railway under pass from East.

The site is located in proximity to civic amenities such as educational institutes,

recreational areas, employment destinations etc.

Distances of the property from the nearest civic amenities and transport nodes have been given below:

Sitaburdi bus depot	700m.
Nagpur Railway station	2 km
Sitaburdi Fort	2 km

3. Connectivity

- i. Development of Sitabuldi as the major commercial hub is more the need of the city and hence all agencies in the city are working together to make this area one of the best destination points of the city. In this direction discussions between Maha Metro & NMC is already in advanced stages.
- ii. As per development plan of Nagpur, the North-South (Western Side) road of project site is 18 mts wide and the bridge over nag river. Maha-Metro has initiated necessary discussion with NMC (Urban Local Bod/ULB) for widening of the said bridge and road to the 18 mts wide. The discussion is at advance stage and Maha-Metro is following up with the proposal on best efforts basis.
- iii. The road on the East-West side of the project site is a layout road and is 9.00 mts wide. This being a layout road and has an underpass of 09 mts width only hence widening of the said road is not possible.
- iv. Maha-Metro has provided connectivity from the Sitaburdi Interchange Station to the project site in the form of foot over bridge.

4. River Front Development:

- a. The riverfront development of the Nag river is to be undertaken as a part of Nagpur Smart City proposal.

SCHEDULE – B : SCOPE OF WORK OF THE PROJECT
(See Clause2.1)

Maha-Metro with a view to undertake commercial development on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) at Mz. Dhantoli, Nagpur and located near Sitaburdi Interchange Station of Nagpur Metro Rail Project, has decided to initiate the tenders for “Development and Operation on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P) and 100 (P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis” (hereinafter referred to as the “**Project**”).

The development is proposed on Design, Build, Finance, Operate and Transfer (the "DBFOT") basis.

The general “Scope of Project” shall involve the construction of proposed project and its operation and management/maintenance for a period of 60 Years.

The Concessionaire shall be handed over the possession of encumbrance free land (the ‘**Site**’) on long term lease of 60 years.

The detailed terms and conditions for development are as follows –

1. Site Details

- 1.1. Maha-Metro is planning to undertake Property Development on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) at Mz. Dhantoli and bearing CTS Number 09, near Sitaburdi Interchange Station of Nagpur Metro Rail Project.
- 1.2. The proposed project site is approximately 200 m from Sitaburdi Interchange Metro Station which is located on North South line of Nagpur Metro Rail Project. Sitaburdi is an interchange station and that makes this site attractive for Property Development.
- 1.3. As per the circular from Govt of Maharashtra vide circular no. TPS-2415/182/CR-98/2015/UD-09 dated 10th November, 2017, the designated land use for the plot is “Commercial”. Thus the Concessionaire/Developer shall be allowed to use the project site for any activity as allowed in the UDCPR-2020 and other applicable rules considering the site is reserved for “Commercial” Usage.
- 1.4. Brief particulars of this Project are as follows :

Project	Development and Operation on land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli and bearing CTS Number 09, near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis
Tender No. and Date	N1PD-30/2021; Date: 26/02/2021

Land details (hereinafter referred to as “site” or “project site”)	Area : 19889.90 Sqm.
Designated Land Use	Commercial
Permissible FSI	2.5
Maximum Allowable FSI as per TOD Policy	4.0
Connectivity to Metro Station	Maha-Metro has provided connectivity from the Sitaburdi Interchange Station to the project site in the form of foot over bridge.

Note :

The Nagpur Metro Rail viaduct is passing along the project site of 19889.90 Sqm. The 20 mts metro corridor (10 mts on each side from centre of Metro Rail alignment) shall be no-development zone i.e no construction permitted).

The Successful Bidder shall be allowed to use the project site for activities as allowed in the UDCPR-2020 of Nagpur city and other applicable rules, considering the site to be reserved for “Commercial” Usage.*

However, it is to be noted that even though Residential is allowed on land with Commercial Land Use, Residential use (either partly or fully) of project site shall not be permitted under any circumstances.

- 1.5. Areas indicated above are approximate. Actual area shall be measured jointly at the time of providing access to the Leased Site(s) / subject land. .
- 1.6. The land shall be free of all encumbrances.
- 1.7. The Site location is given in “**SCHEDULE -A SITE OF THE PROJECT**”.

2. Period of Lease

- 2.1 The Concessionaire shall be handed over the possession of the Site pursuant to the compliance of Conditions Precedent and signing of this Concession Agreement.
- 2.2 Maha-Metro shall provide encumbrance-free land for the term of concession period of 60 years inclusive of construction period of 4 Years from the Effective Date (i.e. the date on which the Conditions Precedent of both the parties are met with).
- 2.3 The Concession given hereby is non-transferable.

3. Construction Period

- 3.1 The Construction period for the project is proposed to be 4 (four) years from the Effective Date (i.e. the date on which the Conditions Precedent of both the parties are met). It shall be mandatory for the Concessionaire to complete the construction of the project with this time frame.
- 3.2 The construction period proposed for the project is 4 (four) Years from the Effective Date and shall include time required for planning, all necessary approvals/ sanctions including but not limited to building permit, environmental clearance, fire Noc etc., execution etc.. The said construction period shall be extendable by another 365 days subject to approval of Maha-Metro and payment of an additional fees amounting to Rs. 5.00 Crores. The said additional fees shall be levied on a pro-rata basis subject to a maximum of 100% (one hundred percent) of the amount of Annual Concession Fee for a delay in the completion of Project by 365 days.
- 3.3 In case the Concessionaire fails to complete the Project within a period of 4 years along with extension thereof, it may be considered as breach of Concession Agreement and Maha-Metro shall forfeit the Performance Security submitted for the project and the agreement shall be liable for termination.
- 3.4 Upon completion of the construction of the project, the Concessionaire shall inform Maha-Metro about completion of the construction. No payment shall be made to the Concessionaire towards the construction, operations and maintenance of the project including any incidental charges as incurred by the concessionaire for the construction/development of the project.

4. Building Sanction

- 4.1 All communication in all matters regarding the approvals related to the subject Site shall be forwarded to the Town Planning Officer appointed by the Maha-Metro. The Officer In-charge shall act as a single window for the Concessionaire and shall be responsible for all the matters related to the Subject Site. Maha-Metro shall inform the details of Officer In Charge to the Concessionaire upon issuance of Letter of Award.
- 4.2 The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the development of the Project, the conceptual plans Maha-Metro for review, within 180 (one hundred and eighty) days from the date of issuance of the Letter of Award by Maha-Metro.
- 4.3 The Concessionaire shall submit the building plans and detail design to Maha-Metro for acceptance. Based on inputs and observations as suggested by the authority, the Concessionaire shall resubmit the final drawings. It is mandatory for Concessionaire to undertake construction of the Project as per IGBC regulations.

- 4.4 As a part of the Smart City Programme of Nagpur, there is a proposal of riverfront development at Nag River adjacent to the Project Site. It is mandatory for Concessionaire to coordinate with concerned riverfront development authority and propose the final proposal for the Project aligning with the riverfront development plan.
- 4.5 It shall be sole responsibility of the Concessionaire to take all statutory approvals from the concerned statutory authorities. All mandatory charges, premium, fees, penalties etc. if any, with regards obtaining of such approvals shall be borne solely by the Concessionaire. It is to be clearly understood that all such clearances are to be obtained by the Concessionaire and the Maha-Metro may only provide assistance wherever possible without any binding obligation.
- 4.6 The development shall be carried out as per the Unified Development Control and Promotion Regulations - 2020, Transit Oriented Development Policy for Nagpur City, local by-laws and regulations, FSI Limits, latest amended National Building Code of India, statutory requirements, laws of land, other applicable Govt. rules/ regulations and the principles of good industry practices. It is mandatory for Concessionaire to undertake construction of the Project as per IGBC regulations.
- 4.7 The maximum timeline for sanctioning of building plans shall be in accordance with the DCR of Nagpur City. As per UDCPR-2020, the time limit for sanctioning of building plans is 60 days. Beyond 60 days limit, the proposal shall be deemed to be sanctioned, only if the submitted proposal is as per the UDCPR – 2020.
- 4.8 Looking into the quantum of development of this site, the Fire NoC from NMC and Environmental Clearance will be mandatory for the project. Before issuing Final Approval, Maha-Metro shall provide tentative sanction to the proposal submitted, for its further submission to NMC for obtaining FIRE NOC and Environmental Clearance from competent authority. Maha-Metro shall issue the Final Approval to Building Plans only after submission of Fire NOC and Environmental Clearance Certificate to Maha-Metro.
- 4.9 Upon approval of Building Plans by Maha-Metro, the Concessionaire shall be responsible to develop the Project as per the approved plans.
- 4.10 The Concessionaire shall make fire-fighting arrangements of his own for the entire project. Such fire-fighting arrangements should conform to the National Building Code, Nagpur Building Bye-laws, Nagpur Fire Safety (Fire Prevention) Rules and all other applicable rules and its further amendments throughout the concession period.
- 4.11 The Lessee shall at all times adhere to all provisions of the Prevailing Metro Railway Acts and amendments thereto and shall also comply with all notices and circulars issued by Maha-Metro in this regard.
- 4.12 The Concessionaire shall provide sufficient parking its staff, visitors and General Public within the leased project site only. No additional parking shall be provided for the use of concessionaire, its staff and visitors outside the leased project site. The provision of minimum parking for the project shall be in accordance with the with the prevailing

Development Control Rules of Nagpur City and approved TOD policy for Nagpur City. The Concessionaire shall be free to provide any number of parking over and above the aforesaid requirement.

4.13 In addition to the minimum required parking, the Concessionaire shall have to provide additional parking of 100 car bays, 100 two wheelers bays and 100 bicycles bays to address parking needs of Metro commuters. The said parking will be handed over to Maha-Metro free of any charges. The periodic maintenance of the parking will be done by the Concessionaire at its own cost.

4.14 The Concessionaire shall ensure that no part of building is projected outside the project site. Any such projections or part of building out site the project site shall be demolished by the authority and no claims or damages will be entertained by Maha-Metro in this regards.

4.15 No construction shall be allowed in the metro corridor i.e. 10 mts on each side from the centre of metro alignment.

4.16 Maha-Metro has designed the façade and elevation for the Project. The existing façade has been designed keeping in consideration the vision of Maha-Metro, landscape of Nagpur and essential design principles.

The Concessionaire shall have the flexibility to propose a design as long as they adhere to the basic design principles considered by Maha-Metro. The design is available in Annexure-4 for the reference of the Concessionaire. In the event, the Concessionaire desires any change in the façade and elevation design, it should take prior approval from Maha-Metro for such change in façade and elevation design. Maha-Metro reserves the right to approve and disapprove such request.

4.17 It shall be mandatory for the Concessionaire to provide the side margins as per the UDCPR-2020, Final TOD policy and any other applicable norms within the project site.

5. Permissible Built-up Area

5.1 Presently, the permissible FSI on the project site is 2.5.

5.2 The Concessionaire shall have to leave open space as per Unified Development Control and Promotion Regulations – 2020, from the total plot area of 19889.90 Sqm. The permissible FSI allowed to the Concessionaire shall be on the net plot area, i.e. after deducting the open space from the total plot area.

5.3 The Concessionaire can avail maximum of FSI 4 (maximum allowable FSI) on the project site, subject to payment of additional premium as per the Transit Oriented Development Policy issued by GoM. It is to be noted that the developer shall have to pay additional premium to Maha-Metro for availing the benefit of the additional FSI. The Transit Oriented Development Policy of GoM is attached at Annex-II of the Draft Concession Agreement, for ready reference.

5.4 The Lease Period of such additional built-up area, if any, shall be co-terminus with the Concession Agreement. All cost associated with the additional built-up area shall be borne by Concessionaire.

6. Minimum Development Obligation

6.1. The Successful Bidder shall have to plan and develop the project in such a way that minimum FSI of 2.5 is consumed on the project site.

6.2. The development of project shall have to be completed within the allowed construction completion time i.e. 4 years. If desired the successful bidder/ Concessionaire can avail additional time for construction in accordance with Point No. **Error! Reference source not found.** of Annexure – 2 : Scope of Work attached to RFP – Volume I.

6.3. In the event if the concessionaire desires to avail the part completion certificate/ Part Occupancy Permit of the project, the same shall be issued subject to completion of construction of more than 50% of the sanctioned built-up area of the project.

6.4. In the event if the full completion certificate / 100% completion of project is not completed within the allowed time limit, the same shall be treated as a major default and the agreement shall be liable for termination.

6.5. It should be noted that, in the event of termination of project due to concessionaire default of non-completion of construction of the project i.e. before obtaining the full Occupancy Permit for the project, no termination payment shall be paid by Maha-Metro to the Concessionaire.

7. Construction Completion

7.1. It shall be mandatory for the Concessionaire to obtain the Construction Completion Certificate before the commencement of business on the project site.

7.2. On receipt of intimation of completion of Construction Works, the work shall be inspected by the Officer In-charge, of Maha-Metro. The work shall be inspected and verified in accordance with the terms and conditions of this agreement. The Concessionaire has to carry out rectifications, if any, as may be directed by the Officer In-charge, of Maha-Metro.

7.3. On satisfactory completion of the Construction Works the Concessionaire shall have to avail the Construction Completion Certificate for the project from Maha-Metro.

8. Usage

8.1. The Concessionaire shall be allowed to use the said land premises for any activity allowed as by law considering the site falls within a "**Commercial Zone**". **However, it is to be noted that even though Residential is allowed on land with Commercial Land Use, Residential use (either partly or fully) of project site shall not be permitted under any circumstances.**

- 8.2. Procuring all the permissions/ licenses etc. required from the statutory/ regulatory/ civic authorities concerned, to be able to use the project site for desired commercial purposes/ business, will be sole responsibility of the Concessionaire. Maha-Metro shall not be responsible for any such procurement and shall not entertain any claims in this regards.
- 8.3. The Concessionaire shall obtain all the necessary statutory clearances from the concerned departments before commencement of Business and such clearance shall also be made available for inspection of Maha-Metro.

9. Mortgage

- 9.1. The Concessionaire will be provided with the leasehold rights of the project site as per the terms and conditions of the Concession Agreement. Under no circumstances the Maha-Metro's land parcel or part thereof shall be mortgaged by the Concessionaire in any manner whatsoever. For raising finances through debt/equity, the Concessionaire will have the rights to avail project financing and also shall have right to mortgage the built-up area/ constructed area of the project along with movable assets, if any. Maha-Metro upon written request made by the Concessionaire shall provide NOC for availing project financing.

10. Right to Sub-Lease

- 10.1. The Concessionaire shall be allowed to sub-lease the built-up premises, however, the Sub-Lessee shall have no right to further sub-lease the premises.
- 10.2. The sub-Lease shall however be for the use of the built-up areas within the project premises, during the subsistence of the Leased Period only with a clear stipulation that all such sub-Lease granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessee, and further that such Sub-Lessee shall not have any claim or seek any compensation from Maha-Metro for such termination.
- 10.3. The list of terms to be included in the Sub-Lease Agreement are at "**Schedule L of the Draft Concession Agreement**".
- 10.4. The Concessionaire shall submit copies of each such sub-lease deed to Maha-Metro for verification and record.
- 10.5. At any point of time, the Lessee shall not enter or cause any of its Sub- Lessee to enter into any sub-Lease agreement with any person or entity for transfer of its rights which would adversely affect the interests of Maha-Metro or is not available to the Concessionaire in the first place. Any such act of the Concessionaire or Sub-Lessee shall

render the Concession Agreement liable for termination at the sole cost and expense of the Lessee.

- 10.6. In case the Concessionaire fails to pay the Concession Fees to the authority for four consecutive times, the Maha-Metro shall have right to receive the Concession Fee from the Sub-Lessee directly, on pro-rata basis for the built-up area under use of Sub-Lessee taking in to consideration of prevailing Concession fees of entire premise.
- 10.7. In the circumstance of Clause No 10.6 above , all clauses, terms & conditions of this Concession Agreement shall be applicable to Sub-Lessee mutatis mutandis
- 10.8. The Concessionaire shall not have any ownership or title right over the leased property, and he has no right to sell it to any individual/institution/ organisation at the any stage of concession period and thereafter.

11. End of the Lease Period

- 11.1. At the end of the Lease Period by efflux of time or premature termination for any reason whatsoever, all rights given under the Concession Agreement shall cease to have effect including its rights over the subject Site and the entire facility thereof shall transfer back to Maha-Metro, free of charge. The Concession Agreement does not create any property rights in favour of the Concessionaire and the property at all times belongs to Maha-Metro. All the immovable furniture and fixtures and other assets permanently attached to the Project Facility shall revert to Maha-Metro without any obligation on Maha-Metro, pay or adjust any consideration or other payment to the Concessionaire.
- 11.2. For the purpose of clarification, at the end of the Lease Period, on any ground whatsoever, the Maha-Metro shall have the absolute right to run the Project Site on its own, or re-Lease or lease it to any third party or to manage it in any other manner as it may deem fit in its sole discretion.
- 11.3. Maha-Metro shall at its own discretion may further lease out the Project Facility upon the expiry of the Term for the Project by a transparent bidding process. In the event if the Concessionaire decides to participate in the said bidding process, the Concessionaire shall be provided the Right of First Refusal ("ROFR") (as per terms herein) and will be given an opportunity to match the Highest Bid, failing which the Highest Bidder will be awarded the Project.

12. ASSIGNABILITY & ENCUMBRANCES

- 12.1. Except for mortgage of built-up space with the banks for raising finances and sub-leasing the use of the Leased Site(s) as per the terms of this RFP /Bid Document and Novation, the Concessionaire shall not assign any of its rights, or interest in this

Concession Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

- 12.2. The concessionaire may subject to the first and paramount charge of Maha-Metro over the receivables from the sub-lessees and other users of the built-up space and facilities, for the payment of the amounts becoming due to Maha-Metro, create second or further charge over the receivables as the security to recognized Financial Institution(s)/Banks for financial assistance and funding of the Project.
- 12.3. Any assignments and encumbrances created by the Concessionaire shall be co-terminus with the Concession Agreement.
- 12.4. Except for the purpose of sub- leasing the use of the Leased Site(s) as per the terms of this RFP, the Concessionaire shall take prior approval of Maha-Metro before assigning any of its rights, or interest in the Concession Agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

13. General Conditions

- 13.1. It shall be mandatory for the Concessionaire to study and install the alternative power arrangement for the Project. Adequate use of Green Energy should be made at the time of planning and development of the project. Solar Power Generation of appropriate size should be installed at the project site. The cost of such installation shall be borne solely by the Concessionaire.
- 13.2. The Maintenance of the constructed premises shall be at the sole discretion and cost of the concessionaire.
- 13.3. No advertisement/hoardings shall be permitted on the piers (full or part thereof) or any other structure of Nagpur Metro Rail alignment passing through the project site.
- 13.4. Further, it is clarified that the Lessee will be completely responsible for any loss of life or property in case of an emergency and/or due to the non-functioning of any system, including but not limited to the fire safety system that is exclusively under scope and control of Lessee. The Maha-Metro shall not be responsible for any loss of life and property in the project site/premises due to any reason including but not limited to malfunctioning of the fire system in case of any fire emergency within the Leased site. The Lessee / Successful Bidder would be responsible for the payments arising out of any third party claims. The Concessionaire is advised to procure insurance for meeting such liabilities at his own cost.
- 13.5. Lessee shall provide unfettered access to the authorized representative of Maha-Metro and its operation staff for the purpose of maintenance works (with respect to Nagpur Metro Rail Project), if applicable, inside the specified area at all times during the Lease period.

- 13.6. The Lessee will have to take statutory clearance from Maha-Metro and other concerned government agencies for removal of existing trees, if any, from the site.
- 13.7. The shifting of the existing operational structures and utilities, if found during excavation or otherwise, on the subject site shall be done by the Lessee within 6 (six) months period under the supervision of Maha-Metro.
- 13.8. During the construction activities the Lessee shall strictly follow the guidelines issued by Maha-Metro-NAGPUR and Maha-Metro’s manuals on Safety, Health and Environment and Safety, Health and Occupational Hazard on construction sites (OHSAS Manual).
- 13.9. Close Circuit Television (CCTV) – The Concessionaire shall supply, install the Close Circuit Television (CCTV) System complete in all respect at the project site. The Camera’s shall be installed at all prominent locations on the project facilities. The CCTV system shall be installed in accordance to the timely instructions received from Police Department. It shall be binding on the Concessionaire to follow the instructions of Maha-Metro in this regards.
- 13.10. The Concessionaire shall be responsible for carrying out the necessary Operation and Maintenance works as suggested by Officer In-charge of Maha-Metro from time-to-time. The Concessionaire shall abide by the direction/rules that may be fixed by Maha-Metro inconsonance with the said agreement.
- 13.11. It shall be the duty of the Concessionaire to ensure peace law and order within the premises of Project.. All civil and criminal liability if any shall be Concessionaire’s responsibility.
- 13.12. The Concessionaire shall be responsible for civil maintenance works within his site like repairing or replacement/ fixtures of water pipe, repairing or replacement of pathways, and maintenance of project assets if any at his own cost and expense.
- 13.13. The Concessionaire shall obtain separate connections for water supply, sewerage disposal and electricity etc. from the concerning departments by paying the applicable charges. The Concessionaire shall be responsible for installation and payment of electricity bills and water charges for the project site.. The maintenance of electric, sewerage disposal and water installations shall be done by the Concessionaire at his own expense.
- 13.14. Maha-Metro shall not be made party between any litigation arising between the Concessionaire and any third party during associated with the development and operations/maintenance of the project. All civil and criminal liability shall be the responsibility of the Concessionaire.
- 13.15. The Concessionaire shall not employ any person who is under the age of 18 years.
- 13.16. At the expiry of the initial Concession period of 60 (sixty) years, the Concessionaire shall

- the concessionaire shall voluntarily waives right for concession renewal at the end of concession period
- Handover the concession land, building, assets, and fixtures, including all immoveable property free of charge to Maha-Metro.
- Maha-Metro shall be free to dispose of the said land and assets as per the prevailing rules and regulations then.

14. Water, Power/Electricity & Disposal of waste water

- 14.1. The concessionaire shall obtain all water, power, and sewage, garbage disposal facilities from concerning statutory authority at his own cost and outside source of metro system.
- 14.2. Any violation of sanitation of metro premises, spillage of waste water, littering & non disposal of solid waste outside of Maha-Metro premises shall be attract a penalty of Rs. 2000/per day, Maha-Metro shall have power to impose such penalty upon the Concessionaire till correction of such violation.
- 14.3. This penalty amount shall be in addition to Annual Concession Fees, Fixed Upfront Premium & Other taxes payable to Maha-Metro.

15. Infringement of Maha-Metro premises /Services and penalty

- 15.1. The Concessionaire shall not have any right to infringe the Maha-Metro premises and normal business, operation and commuters facilities of Metro Rail Services.
- 15.2. Upon observation of any such infringement, Maha-Metro shall issue a notice of compliance. If the Concessionaire fails to comply the three such notice and continue such infringement, the authority have right to impose a penalty of Rs. 5000/ per day. This penalty shall be in addition to Annual Concession Fees, Fixed Upfront Premium& other taxes payable to Maha-Metro.

SCHEDULE- C APPLICABLE PERMITS

(See Clause 4.3.1)

1. Applicable Permits

The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits / NOC's/ Clearances from necessary Agencies / Authorities on or before the Effective Date, save and except to the extent of a waiver granted by Maha-Metro in accordance with Clause 4.3.1 of the Agreement: Concessionaire shall adhere to norms set out by those agencies/ Authorities with regards to implementation of the Project. Some of the Agencies/Authorities are listed below. Maha-Metro shall extend only administrative support in this regard. Maha-Metro shall not be responsible for any delay in getting approval/Clearance from the agencies/ Authorities.

*The clearance list is indicative and not exhaustive

Sr. No	Item	Agency
1	Building permit	Maha-Metro
2	Environmental Clearance	State Environmental Clearance Dept., Government of Maharashtra
3	Fire NoC	Nagpur Municipal Corporation, Nagpur
4	Water connection	Nagpur Municipal Corporation, Nagpur
5	Shifting of Services and utilities, if applicable	Nagpur Municipal Corporation, Nagpur, Maharashtra State Electricity Distribution Company Ltd., BSNL etc
6	Traffic Management during operation, if applicable	Nagpur Traffic Department
7	Electricity connection	MSEDCL
8	Clearance for employing labour- Primary employer	Labour Commissioner, Nagpur
9	Clearance for blasting and use of explosives	The Collector, Nagpur District.
10	Cutting of Trees	Nagpur Municipal Corporation, Nagpur
11	Use of water and its discharge	Nagpur Municipal Corporation, Nagpur
12	Drains and sewers	Nagpur Municipal Corporation, Nagpur

SCHEDULE- D PERFORMANCE SECURITY/PAYMENT SECURITY

(See Clause 9.1)

Bid Document No.:

Dated:

Name of Project: Bid for "Development and Operation of land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) at Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis"

(To be executed on Non Judicial Stamp Paper of appropriate value as prescribed by the Stamp Act of the respective State in which this document is executed (but not less than Rs.500) and duly notarized.)

To

Maharashtra Metro Rail Corporation Limited.

(Nagpur Metro Rail Project)

Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College,

Near Deekshabhoomi, Nagpur – 440010

WHEREAS:

(A.) Maharashtra Metro Rail Corporation Limited (Nagpur Metro Rail Project) having its office at (Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010) Metro House, 28/2 Anand Nagar, C K Naidu Road, Civil Lines, Nagpur-440001 (hereinafter called the "Maha-Metro" which expression shall unless repugnant to the subject and context on meaning thereof include its successors and assigns) having invited Bids in connection with Contract No. _____ dated _____ for ***"Development and Operation on land admeasuring 19,889.90 Sqm bearing Kh. No. 98, 99(P) and 100(P) Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis"*** and in further consideration of the of the aforesaid project M/s. _____ (Name of Agency) have submitted the Bid and are selected as Successful Bidder vide order no. dated

(B.) Further Maha-Metro have issued a letter of Award to Ms..... for compliance of certain conditions as stipulated in Letter of Award, and on the conditions include deposition of the Performance Security amounting to Rs. 14,50,00,000/- (Rs. Fourteen Crores Fifty Lakhs only) in the form of an unconditional and irrevocable Bank Guarantee furnished by Scheduled Bank in India and payable at Nagpur, as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C.) We, through our Branch at (the "Bank") have agreed to

furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Concession Period, under and in accordance with the Agreement, and agrees and undertakes to pay to Maha-Metro, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as Maha-Metro shall claim, without Maha-Metro being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from Maha-Metro, under the hand of an Officer not below the rank of General Manager in the Maharashtra Metro Rail Corporation Limited, 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 Maha-Metro shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Concession 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 Maha-Metro 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, Maha-Metro 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 Maha-Metro to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. Maha-Metro 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 Maha-Metro 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 Maha-Metro, and the Bank shall not be released from its liability and obligation under these presents by any exercise by Maha-Metro 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 Maha-Metro 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 Maha-Metro in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 3rd (third) anniversary of the Effective Date or Commercial Operation Date; whichever is higher unless a demand or claim in writing is made by Maha-Metro on the Bank under this Guarantee, no later than 12 (Twelve) months from the date of expiry of this Guarantee, all rights of Maha-Metro under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of Maha-Metro 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 registered 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 registered post it shall be deemed to have been given at the time when it ought to have been delivered in due course of registered post and in proving such notice, when given by registered post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of Maha-Metro 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 _____ or until it is released earlier by Maha-Metro 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 -E CONSTRUCTION COMPLETION CERTIFICATE

(See Clauses 13)

**CONSTRUCTION COMPLETION CERTIFICATE
FORM FOR FULL / PART OCCUPANCY CERTIFICATE**

Office No.

Date

To,

i) Owner:

ii) Architect, Licensed Engineer , Structural Engineer / Supervisor

Sir,

The full / part development work / erection re-erection / or alteration in of building / part building No _____ Plot No..... Revenue S.No...../ Gat No...../ Khasara No..... / City Survey No...../ Final Plot No....., Moujecompleted under the supervision of _____ Architect, Licensed Engineer/ Structural Engineer / Supervisor, / License No _____ may be occupied on the following conditions.

1. -----
2. -----
3. -----
4. -----

A set of certified completion plans is returned herewith.

Encl : As above.

Office Stamp

**Yours faithfully,
Authority or an officer appointed by it**

(Specimen of Stamp to be marked on the plan)

OFFICE OF THE **----- Letter No. ----- Date : ----- ----- OCCUPATION GRANTED

OFFICE OF THE **----- Letter No. ----- Date : ----- ----- PART OCCUPATION GRANTED
--

SCHEDULE- F SAFETY REQUIREMENTS

(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 the Project, irrespective of the person(s) at fault.
- 1.2. Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3. Safety Requirements include measures associated with traffic management and regulation such as road signs, pavement marking, traffic control devices, roadside furniture, highway design elements, enforcement and emergency response.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

- (a) Applicable Laws and Applicable Permits;
- (b) relevant Standards/Guidelines;
- (c) safety manual;
- (d) provisions of this Agreement; and
- (e) Good Industry Practice.
- (f) BOCW Act 1966 including all Amendments

SCHEDULE- G VESTING CERTIFICATE

(See Clause 28.4)

1. The Maharashtra Metro Rail Corporation Limited (the "**Maha-Metro**") refers to the Concession Agreement dated (the "**Agreement**") entered into between Maha-Metro and (the "**Concessionaire**") for **Development and Operation of land admeasuring 19889.90 Sqm bearing Kh. No. 98, 99 (P), 100 (P) at Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership Basis** (the "**Project**") on design, build, finance, operate and transfer ("DBFOT") basis.
2. Maha-Metro hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 28.1 of the Agreement on the basis that upon issue of this Vesting Certificate, Maha-Metro 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 Maha-Metro, 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

For and on behalf of
CONCESSIONAIRE by:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of
Maharashtra Metro Rail Corporation
Limited by:

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

In the presence of:

1.

2.

SCHEDULE I- LIST OF BANNED ACTIVITIES

The Scheduled Land cannot be used for any activity listed this Schedule. Maha-Metro reserves the right to take all appropriate actions (if required) against the Concessionaire to ensure that there is no violation of the same.

- a) Any product / Service the sale of which is unlawful / illegal or deemed unlawful under any Indian Act or legislation
- b) Any product, the storage and sale of which may lead to or be considered as a fire hazard; such as fire crackers, industrial explosives, chemicals, etc.
- c) Any office of political establishments any religious activities

SCHEDULE J- SUBSTITUTION AGREEMENT

(Under Article 27.2)

This Substitution Agreement (hereinafter referred to as "Substitution Agreement") is entered into on this the [] day of [], [] at []

AMONGST

1. Maharashtra Metro Rail Corporation, a company incorporated under the Companies Act 1956 having its registered office at [insert] (hereinafter referred to as "Maha-Metro", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and assigns) of the FIRST PART; and,
2. [insert], a company incorporated under the Companies Act, 2013 as a Special Purpose Company for implementing the Project and having its registered office at [insert] (hereinafter referred to as "Concessionaire", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the SECOND PART; and,
3. [insert name and particulars of Lenders' Representative] [description about incorporation] and having its registered office at [insert], acting for and on behalf of the Lenders listed in Schedule I hereto as their duly authorised agent with regard to matters arising out of or in relation to the Substitution Agreement (hereinafter referred to as the "Lenders' Representative", which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes) of the THIRD PART.

WHEREAS:

- (A) Maha-Metro has entered into a Concession Agreement dated [] with the Concessionaire (the "Concession Agreement"), whereby Maha-Metro has granted the Concessionaire in terms of the Concession Agreement the right to undertake the Project upon the Site, as defined in the Concession Agreement annexed hereto, as Schedule II.
- (B) As per the provisions of the Concession Agreement, it is agreed by and between Maha-Metro and the Concessionaire that Maha-Metro shall grant leasehold rights of the Site to the Concessionaire in accordance with the Concession Agreement. The Lenders

have agreed to finance the Project in accordance with the terms and conditions set forth in the respective Financing Agreements.

(C) The Lenders have requested Maha-Metro to enter into the Substitution Agreement for securing their interests through assignment, transfer of the rights of the Concessionaire under the Concession Agreement ('Grant') and substitution of the Concessionaire by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Concession Agreement.

(D) In order to enable implementation of the Project including its financing and construction, Maha-Metro has agreed and undertaken to transfer and assign the Grant to a Nominated Company in accordance with the terms and conditions set forth in the Substitution Agreement and the Concession Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Substitution Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows:-

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Concession Agreement" shall have the meaning ascribed to the term in the foregoing Recitals;

"Substitution Agreement" means the Substitution Agreement and any amendment thereto made in accordance with the provisions contained in the Substitution Agreement;

"Claimant" shall have the meaning ascribed to the term in Article 8.3.2 hereof;

"Financial Default" means occurrence of a material breach of the terms and conditions of the Financing Agreements;

"Lenders" means financial institutions, banks, multilateral funding agencies, and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting the costs of the Concessionaire in relation to the design, development and construction of the Project;

"Lenders' Representative" means the person referred to as the Lenders' Representative in the foregoing Recitals;

"Lenders' Substitution Notice" shall have the meaning ascribed to the term in Article 3.2.3;

"Lenders' Substitution Representation" shall have the meaning ascribed to the term in Article 3.3.2;

"Nominated Company" means a company, incorporated under the provisions of the Companies Act, 1956/2013, selected in accordance with the provisions hereof by Maha-Metro or the Lenders' Representative, on behalf of the Lenders, and proposed to Maha-Metro for assignment/transfer of the Grant as provided in the Substitution Agreement;

"Notice of Financial Default" shall have the meaning ascribed to the term in Article 3.2.1;

"Notice of Intent" shall have the meaning ascribed to the term in Article 8.3.2;

"Novation" shall mean the process or the act of replacing the Concessionaire, either partly or fully, in any agreement or sub-contract in respect of the Project by another party such that the contract transferred by the novation process transfers all rights, duties and obligations from the Concessionaire, original obligor, to the new obligor.

"Parties" means the parties to the Substitution Agreement collectively and "Party" shall mean any of the Parties to the Substitution Agreement individually.

"Respondent" shall have the meaning ascribed to the term in Article 8.3.2;

"Substitution" is the process of replacement of a Nominated Company in place of the Concessionaire by undertaking the following activities:

- (a) Grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into subcontracts), under and in accordance with the terms and conditions set forth in the Concession Agreement, for the remainder of the Term, by the Novation of the Concession Agreement in favour of the Nominated Company;
- (b) Grant, to the Nominated Company, the leasehold interest (as the case may be) over the Project Land together with the Assets and Project Utilities (to the extent permitted under the Concession Agreement) all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, for the remainder

- of the Term, by the Novation of the Concession Agreement in the event of execution of the same in favour of the Nominated Company;
- (c) Novation of the contracts and any other agreement needed to be novated for the purpose of implementing and operating the Project in accordance with the terms and conditions set forth in the Concession Agreement in the event of execution of the same, in favour of the Nominated Company;
 - (d) The execution of a new Substitution Agreement with the Nominated Company for the remainder of the Term on the same terms and conditions hereof;
 - (e) Transfer by the Concessionaire all its rights and obligations as provided in the Concession Agreement, including possession of all Assets and Project Utilities of the Project to the Nominated Company;
 - (f) Grant by Maha-Metro to the Nominated Company of all approvals, clearances and permissions within Maha-Metro 's power and necessary for implementing and operating the Project, provided duly completed application in accordance with Applicable Law is submitted to Maha-Metro ; and

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 the Lenders.
- 1.2.2 References to Articles are, unless stated otherwise, references to Articles of the Substitution Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in the Substitution Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in the Substitution 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 Article 1.2 of the Concession Agreement shall apply, mutatis mutandis, to the Substitution Agreement.

ARTICLE II

ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby assigns the rights, title and interest in the Grant to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of the Substitution Agreement and the Concession Agreement by way of security in respect of financing by the Lenders under the Financing Agreement.

ARTICLE III

SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of the Substitution Agreement and the Concession Agreement.

3.1.2 Maha-Metro hereby agrees to substitute the Concessionaire by assignment of the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative or Maha-Metro, as the case may be, in accordance with the Substitution Agreement. In the event the Nominated Company is selected by the Lenders’ Representative, The Lenders’ Representative has to obtain Maha-Metro’s prior approval for such substitution. (For the avoidance of doubt, the Lenders or the Lenders’ Representative either individually or collectively, shall not be entitled to operate as the Concessionaire.

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 Maha-Metro for its information and record. A Notice of Financial Default under this Article III shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of the Substitution 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 the Substitution Agreement or the Financing Agreements, substitute the Concessionaire by a

Nominated Company in accordance with the provisions of the Substitution Agreement.

- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may make a representation to Maha-Metro, stating that it intends to substitute the Concessionaire by a Nominated Company ("Lenders' Substitution Notice"). 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 the Substitution Agreement and the Concession Agreement within a period of 180 (one hundred and eighty) days from the date of Lenders' Substitution Notice, and Maha-Metro shall withhold Termination due to any Concessionaire Event of Default for the aforesaid period of 180 (one hundred and eighty) days, and the Concessionaire shall continue to discharge its obligations thereunder for such period. Lenders' Representative shall forthwith send a copy of the aforesaid Lenders' Substitution Notice to the Concessionaire.

3.3 Substitution upon occurrence of Concessionaire Event of Default

- 3.3.1 Upon occurrence of a Concessionaire Event of Default, Maha-Metro shall, by sending a copy of the Notice of Intention to Terminate to the Lenders' Representative, inform of its intention to terminate the Concession Agreement and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating its intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative make a representation to Maha-Metro within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company ("Lenders' Substitution Representation"), 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 the Substitution Agreement and the Concession Agreement within a period of 180 (one hundred and eighty) days from the date of issue of Lenders' Substitution Representation, Maha-Metro shall withhold Termination for the aforesaid period of 180 (one hundred and eighty) days, and the Concessionaire shall continue to discharge its obligations thereunder for such period. Lenders' Representative shall forthwith send a copy of the Lenders' Substitution Representation to the Concessionaire.

3.4 Procedure for substitution

- 3.4.1 Maha-Metro and the Concessionaire hereby agree that on or after the date of Lenders' Substitution Notice under Article 3.2.3 and/or Lenders' Substitution Representation Article 3.3.2, as the case may be, the Lenders' Representative or Maha-Metro as the case may be, without prejudice to any of the other rights or remedies of the Lenders under the Financing Agreements, invite offers through competitive tenders for the take over and transfer of the Grant to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards Maha-Metro under the Concession Agreement and towards the Lenders under the Financing Agreements, subject to such Nominated Company conforming to the qualification criteria prescribed by Maha-Metro at the time of selection of the Concessionaire.
- 3.4.2 The criteria for selection of the Nominated Company shall be a lump sum Substitution Premium to be paid upfront to Maha-Metro by the selected party as consideration prior to execution of any agreement for the Project. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Concessionaire in terms of the Concession Agreement, Financing Agreement, letter of allotment/sub-lease deeds and contracts with the Sub-contractors which shall include but not be limited to overdue and future payments towards taxes to be paid to the Government, repayment or refunds to third parties, instalments of Lease Premium (and interests thereof) to be paid to Maha-Metro, Annual Concession Fees to be paid to Maha-Metro, liquidated damages to be paid to Maha-Metro, payment to Sub-contractors relating to the Project, expenses incurred and claims by Maha-Metro on the Project due to the Concessionaire's default in terms of the Concession Agreement to be paid to Maha-Metro, servicing of Debt Due to the Lenders. Moreover as part of the condition of the bidding, the Nominated Company shall be required to deposit an additional minimum amount within 30 days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified hereabove. The lump sum Substitution Premium may be either negative or positive depending on the perception of the concerned party of the rights and obligations in terms of the Concession Agreement, Lease Deed and Financing Agreements.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request Maha-Metro to:
- (a) transfer the Grant to the Nominated Company, on the same terms and conditions, for the remainder of the Term of the Concession Agreement; and

(b) enter into a new Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in the Substitution Agreement.

3.4.4 If Maha-Metro has any objection to the transfer of Grant in favour of the Nominated Company in accordance with the Substitution Agreement, it shall within a period of 30 (thirty) days from the date of receipt of proposal made by the Lenders' Representative, give a reasoned decision as regards the acceptability (or objection, as the case may be) of the Nominated Company. In the event the Nominated Company is acceptable to Maha-Metro, Maha-Metro shall give acceptance transfer the Grant within 15 (fifteen) days of its acceptance of the Nominated Company; provided that in the event of an objection by Maha-Metro, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

Provided that it is expressly agreed between the Parties hereto that in any event the process of Substitution of the Concessionaire shall be completed within a period of 180 (one hundred and eighty) days from the date of Lenders' Substitution Notice or Lenders' Substitution Representation.

3.5 Selection to be binding

3.5.1 The decision of Maha-Metro in selection of the Nominated Company or the approval of the Nominated Company selected by the Lenders' Representative shall be final and binding on the Concessionaire and shall be deemed to have been made with the concurrence of the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or Maha-Metro taken pursuant to the Substitution Agreement including the transfer/assignment of the Grant in favour of the Nominated Company. It is hereby acknowledged by the Parties that the rights of Maha-Metro and the Lenders' Representative are irrevocable and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain Maha-Metro or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Grant as requested by the Lenders' Representative or as undertaken by Maha-Metro. No consultation, concurrence or approval with or of the Concessionaire will be required for such substitution.

3.5.2 All actions of the Lenders' Representative and/or Maha-Metro hereunder shall be deemed to be by and on behalf of, and expressly authorized by, the Lenders, and be binding upon them.

3.6 Substitution by Nominated Company in other agreements

The Concessionaire shall ensure and procure that each agreement or contract it enters with any third party in relation to the Grant contains provisions that entitle the Nominated Company to step into such 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. The Nominated Company shall assume the rights and obligations of the Concessionaire in all such agreements and contracts including letter of allotments and sub-lease deeds pursuant to its receiving the Grant from Maha-Metro.

ARTICLE IV

LENDER'S REPRESENTATIVE'S FAILURE TO SUBSTITUTE

- 4.1 In the event that no company is nominated by the Lenders' Representative or the company selected by the Lenders' Representative in terms of Article 3.4 within the period of 180 (one hundred and eighty) days from the Lenders' Substitution Notice under Article 3.2.3 or the Lenders' Substitution Representation under Article 3.3.2, is not acceptable to Maha-Metro, it shall be entitled to Substitute the Concessionaire or terminate the Concession Agreement.
- 4.2 Provided that notwithstanding anything contained to the contrary herein it is expressly agreed between Maha-Metro and the Lenders' Representative that in the event Maha-Metro substitutes the Concessionaire by a Nominated Company after the failure of the Lenders' Representative to Substitute the Concessionaire, the Lenders shall have to forgo 15% of the debt due and the Lenders shall restructure the debt obligations of the Concessionaire pursuant to the Financing Agreements and such Nominated Company selected by Maha-Metro shall only be liable for 85% (eighty five per cent only) of the Debt Due.

ARTICLE V

COMPENSTATION TO THE CONCESSIONAIRE PURSUANT TO SUBSTITUTION

- 5.1 The Concessionaire acknowledges and agrees that subsequent to the Substitution the Concessionaire shall suffer financial losses. The Concessionaire hereby indemnifies the Nominated Company, the Lenders' Representative and Maha-

Metro from any such losses due to the Substitution. Based on the amount of Substitution Premium offered by the selected party in terms of the Article 3.4.2, the Concessionaire shall be entitled to the payment described in this Article V as compensation towards their Substitution only if the Nominated Company has paid a positive Substitution Premium and deposited the required minimum amount toward the overdue payment liabilities specified in Article 3.4.2 here above.

- 5.2 If the Substitution Premium paid by the Nominated Company is positive, the Concessionaire shall be entitled to the full amount of Substitution Premium subject to such payment not exceeding the 85% of the total amount of Equity and Subordinated debt due as on the date of the Termination Notice by the Concessionaire on the Project. It is clarified that the Concessionaire shall not be entitled to any return on Equity.
- 5.3 If the Substitution Premium paid by the Nominated Company is more than the maximum entitlements specified in the Concession Agreement, the remaining amount shall be distributed as following:
- (i) if the Substitution is done by the Lenders' Representative the remaining amount shall be shared equally between Lenders and Maha-Metro ;
 - (ii) if the Substitution is done by Maha-Metro , the entire remaining amount shall be paid to Maha-Metro .
- 5.4 If the Substitution Premium paid by the Nominated Company is less than the maximum entitlement of the Concessionaire in terms of the Concession Agreement, the Concessionaire shall be entitled to only the Substitution Premium paid by the Nominated Company.
- 5.5 An Independent Auditor shall be appointed by Maha-Metro or the Lender, as the case may be, for audit of the accounts of the Concessionaire for arriving at the payments due for refund to the Concessionaire as above. The cost of the independent auditor shall be deducted from the amount due for refund to the Concessionaire in terms of this Article V.

ARTICLE VI

DURATION OF THE AGREEMENT

6.1 Duration of the Substitution Agreement

The Substitution Agreement shall come into force from the date hereof and shall expire with the Expiry of the Concession Agreement. However the rights and obligations of the Lenders shall cease to exist on the occurrence of the following events, whichever is earlier:

- (i) termination of the Financing Agreements; or
- (ii) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements; or
- (iii) expiry of the Term of the Concession Agreement.

6.2 Substitution by Maha-Metro

Maha-Metro's right of Substitution of the Concessionaire through the Substitution Agreement shall continue till the Expiry of the Concession Agreement even after Lenders cease to exist as Party to the Substitution Agreement in terms of the Article 6.1 here above.

ARTICLE VII

INDEMNITY

7.1 General indemnity

- 7.1.1 The Concessionaire hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold Maha-Metro and the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands 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 the Substitution Agreement or the Concession Agreement on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 Maha-Metro hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of Maha-Metro to fulfil any of its material obligations under the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their functions by Maha-Metro, its officers, servants and agents.
- 7.1.3 The Lenders' Representative hereby indemnifies and agrees and undertakes to, at all 'times, indemnify, defend and hold Maha-Metro and the Concessionaire harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under the Substitution Agreement,

materially and adversely affecting the performance of the Concessionaire's obligations or Maha-Metro 's obligation under the Concession Agreement or the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their 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 claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 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/ or shall not settle or pay the claim/ demand 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 at its (Indemnifying Party's) risk, costs and expense. 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.

ARTICLE VIII

DISPUTE RESOLUTION

8.1 Disputes - Amicable Settlement

The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Article 8.2 shall apply.

8.2 Dispute Resolution

8.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to the concession agreement or Substitution Agreement (including its interpretation) between the Parties, provisions of concession agreement shall prevail.

8.2.2 The Parties agree to use their best efforts for resolving all the Disputes arising under or in respect of the Substitution 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.

8.3 Arbitration

- 8.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 8.2, shall be finally decided by reference to arbitration by an Arbitral Tribunal appointed in accordance provisions of concession agreement. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be Delhi, and the language of arbitration proceedings shall be English.
- 8.3.2 A notice of the intent ("**Notice of Intent**") to refer the dispute to arbitration may be given by one or more Parties (the "**Claimant(s)**") to the other Parties (the "**Respondent(s)**"). There shall be an Arbitral Tribunal consisting of three (3) arbitrators. Each Party shall be entitled to appoint one arbitrator to the Arbitral Tribunal.
- 8.3.3 The Arbitral Tribunal shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article VIII shall be final and binding on the Claimant(s) and Respondent(s) as from the date it is made, and the Concessionaire, Lenders' Representative and Maha-Metro agree and undertake to obey and implement such Award without delay.
- 8.3.4 The Concessionaire, Lenders' Representative and Maha-Metro agree that an Award may be enforced against the Concessionaire and/or Lenders' Representative and/or Maha-Metro , as the case may be, and their respective assets wherever situated.
- 8.3.5 This Article VIII shall survive the termination or expiry of the Substitution Agreement.

8.4 Continued performance

While any Dispute under the Substitution Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under the Substitution

Agreement without prejudice to the final determination in accordance with the provisions under this Article VIII.

Notwithstanding anything contrary contained herein, all obligations of Maha-Metro under this Substitution Agreement shall automatically come to an end upon the expiry or termination of the Concession Agreement and/or Substitution Agreement and Maha-Metro shall not be obliged to perform such obligation during the pendency of any post-expiry or post-termination Dispute, whether referred to arbitration or not.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

The Substitution Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article IX and Article VIII, the Courts at Nagpur alone shall have exclusive jurisdiction over all matters arising out of or relating to the Substitution Agreement.

9.2 Priority of agreements

In the event of any conflict between the Concession Agreement and the Substitution

Agreement, the provisions contained in the Concession Agreement shall prevail over the Substitution Agreement.

9.3 Alteration of terms

All additions, amendments, modifications and variations to the Substitution Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.4 Waiver

9.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under the Substitution 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 the Substitution Agreement;

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

(c) shall not affect

- 9.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Substitution 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.

9.5 No third party beneficiaries

The Substitution Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.6 Survival

- 9.6.1 Termination of the Substitution 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 the Substitution 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 Severability

If for any reason whatever any provision of the Substitution Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be

subject to dispute resolution under Article VIII of the Substitution Agreement or otherwise.

9.8 Successors and assigns

The Substitution Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.9 Notices

All notices, requests, demands or other communication required or permitted to be given under this Substitution Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the address indicated below:

(i) In the case of Maha-Metro, to: Attention: []

Add: Maharashtra Metrorail Corporation Limited
Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College,
Near Deekshabhoomi, Nagpur – 440010

E mail: []

Facsimile: []

Kind Attention:

CC: Maha-Metro Representative

NOTE: Maha-Metro to please fill in.

(ii) In the case of notices to Concessionaire, to: Attention: []

Add:

E mail: []

Facsimile: []

NOTE: Maha-Metro to please fill in.

(iii) In the case of notices to Lenders’ Representative, to: Attention: []

Add:

E mail: []

Facsimile: []

NOTE: Maha-Metro to please fill in.

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given have last notified the Party giving the same in the manner provided in this Article, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Article 9.9 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

(i) Sent by registered post, 3 (Three) Business Days after posting it; and

(ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

9.10 Language

All notices, certificates, correspondence and proceedings under or in connection with the Substitution Agreement shall be in English.

9.11 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.12 Original Document

The Substitution Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of the Substitution Agreement.

IN WITNESS WHEREOF the Substitution Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and on the date first above written.

SIGNED AND DELIVERED FOR AND ON BEHALF OF MAHARASHTRA METRO RAIL CORPORATION

BY: _____

Name: _____

Title: _____

SIGNED AND DELIVERED FOR AND BEHALF OF [insert name of Concessionaire] DULY AUTHORISED VIDE RESOLUTION OF THE BOARD OF DIRECTORS

BY: _____

Name: _____

Title: _____

SIGNED AND DELIVERED FOR AND ON BEHALF OF LENDERS' REPRESENTATIVE

BY: _____

Name: _____

Title: _____

Witnesses

1. Name: _____

Address: _____

2. Name: _____

Address: _____

Schedule I

Details of Lenders

S.No.	Name	Address

Schedule II

Concession Agreement

[Note: Copy of Concession Agreement to be annexed]

SCHEDULE K: DRAFT ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made on the _____ day of _____ 20XX among **Maharashtra Metro Rail Corporation Limited**, a company incorporated under the Companies Act, 2013, having its registered office at "Metro House, 28/2 Anand Nagar, C K Naidu Road, Civil Lines, Nagpur-440001" (**Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010**) (hereinafter referred to as (hereinafter referred to as "Maha-Metro" which expression shall unless repugnant to the context include its successors and assigns) of the First Part, AND

M/s _____ Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the "Concessionaire" which expression shall unless repugnant to the context include the successors and permitted assigns) of the second Part

and _____ a banking company organised and existing under the laws of India and having its head office at _____ and having its branch office at _____ and also in other parts of Nagpur (hereinafter referred to as the "Escrow Agent" which expression shall unless repugnant to the or meaning thereof include their successors and permitted assigns) of the Third Part .

RECITALS

- WHEREAS Maha-Metro and the Concessionaire have entered into a Concession Agreement dated _____ (hereinafter referred to as "Concession Agreement") pursuant to which Maha-Metro has granted to the Lease to develop, procure, finance, construct, manage, maintain and License the use of the built up spaces and facilities in the Specified Area for specified purposes at _____, a copy of the Concession Agreement signed between Maha-Metro and the Licensee is attached to this Agreement.
- AND WHEREAS to provide security to Maha-Metro and to have the first and paramount charge over all the receivables that the Licensee is entitled to claim or receive from the Sub licensee, appointed in terms of the said Concession Agreement, from the use of the Licensed

Space Facilities built up space, etc. in the specified area, the Licensee has agreed to open the Escrow Account in terms of this Escrow Agreement

- AND WHEREAS it is provided in the Concession Agreement dated _____ 201X that the Licensee shall, within 2 months from the date of signing of the Concession Agreement shall identify a nationalized/scheduled bank acceptable to Maha-Metro and open an account in terms of the Escrow Agreement to be signed between the Licensee, Maha-Metro and the Bank and that the Escrow Agent shall be instructed to remit to Maha-Metro the amounts becoming due to Maha-Metro under the Concession Agreement as per the claims made by Maha-Metro from time to time.
- AND WHEREAS Maha-Metro and the Licensee have agreed to appoint _____ (the Escrow Agent) and the said bank has agreed to act as the Escrow Agent to hold and administer monies deposited in the Escrow Account and to transfer such monies in accordance with the terms of this Agreement read with the Concession Agreement.

NOW THIS AGREEMENT WITNESSETH AS UNDER

1. At the instance of the Licensee the Escrow Agent has opened a Escrow Account being Account No. _____ with _____, solely for the proposes of this to duly secure the interest of Maha-Metro in terms of the said Concession Agreement. Maha-Metro and the Licensee hereby appoint (NAME OF BANK _____) and (NAME OF BANK _____), hereby accepts the appointment as the Escrow Agent in respect of the amounts deposited in the Escrow Account and to hold and administer the proceeds in the said Escrow Account in accordance with the terms and conditions contained herein.
2. The CONCESSIONAIRE hereby unconditionally and irrevocably agree to receive and deposit all receivables of whatsoever nature from sub-leasing/ sub-licensing the use of the built-up spaces or otherwise the Licensed Area at the Specified Area into the Escrow account with the Escrow Agent.
3. The CONCESSIONAIRE agrees to deposit the amounts received in cash at the Escrow Account within 24 hours from the receipt thereof or the immediate next working day in case of a Bank holiday.

4. The CONCESSIONAIRE shall not give credit or make any adjustment against the receivables for any payment due from the Licensee.
5. The CONCESSIONAIRE hereby acknowledges and undertakes not to open or establish any another account other than the Escrow Account with any Bank or Body Corporate for the receipt/ deposit of the receivables from sub-licensing the use of the built-up space or otherwise from the facilities at the Specified Area.
6. The CONCESSIONAIRE shall ensure that no other person is authorized to utilize or appropriate any part of the receivables received from sub-licensing the builtup spaces at the Specified Area.
7. The Escrow Agent has an irrevocable authority to remit and the Escrow Agent shall direct the due remittance to Maha-Metro the amounts becoming due from the CONCESSIONAIRE to Maha-Metro under the LEAES/CONCESSION Agreement as per the claims made by Maha-Metro from time to time. Maha-Metro shall always have the first charge over the project receivables, however the said shall be limited to the extent of amount to be received by Maha-Metro in that respective year.
8. So long any amount is outstanding to Maha-Metro from the Licensee as per the Claims made by Maha-Metro, the amounts in the Escrow Account shall not be utilized for any other purpose other than for making outstanding payments to Maha-Metro. The CONCESSIONAIRE shall ensure and maintain minimum balance equal to one quarterly recurring payment in Maha-Metro Escrow Account/ Maha-Metro Account at all times. After due discharge of all the amounts outstanding to Maha-Metro and maintain minimum balance equal to one quarterly recurring payment, the Escrow Agent shall allow the amount to be utilized by the CONCESSIONAIRE only till such time further amount becomes due from Licensee to Maha-Metro as per the Concession Agreement and/or as per claims made by Maha-Metro.
9. The CONCESSIONAIRE shall not create any charge over the receivables including the amounts in the Escrow Account and also the actionable claims against the persons who are allowed to utilize the built-up space in favour of any person including in favour of the banks or lending institution over-riding or otherwise adversely affecting the interest of Maha-Metro.

10. The Escrow Agent shall compute and maintain records of all the transactions and the copies of such records shall be made available to Maha-Metro as sought from time to time.
11. Names and specimen signatures of the officials of Maha-Metro and the CONCESSIONAIRE authorized to issue notices under this agreement duly attested are annexed. Changes, if any, in the said authorization will be advised to the Escrow Agent from time to time.
12. The Maha-Metro and the Licensee both declare that notwithstanding anything to the contrary herein, this agreement is neither intended nor shall be construed, as an amendment or modification to the Concession Agreement.
13. Except as otherwise expressly provided elsewhere in this Agreement, all notices and/or communications which are required and remitted to be in writing shall be sufficient if delivered by Registered Post/ Speed post/ courier/ telegram and addressed on the addresses given hereunder: 1. Maha-Metro The Managing Director, **Metro Bhavan, VIP Road, Opp. Dr. Babasaheb Ambedkar College, Near Deekshabhoomi, Nagpur – 440010**, 2. Licensee _____, _____, _____ 3. Escrow Agent _____, _____, _____
14. All the parts of this Agreement shall be governed and construed in accordance with the Indian Laws and the parties hereby irrevocably submit to the exclusive jurisdiction of the Courts in Nagpur.
15. No variation of this agreement shall be valid or effective unless agreed to in writing by all the parties.
16. The CONCESSIONAIRE shall obtain, maintain and comply with all authorisation, licenses and consents for operation of the Escrow Account at its own cost and pay any taxes, fees, charges or duties including stamp duty or registration fees as may be required from time to time without raising any debit in the Escrow Account.

17. The CONCESSIONAIRE shall indemnify the Escrow Agent against any financial liability, which may arise while the Escrow Agent discharges his duties and functions as per the Tripartite Agreement to be signed with the Escrow Agent.
18. This agreement shall be effective on the date of execution of this agreement, however the obligation of the Parties hereto shall commence from This agreement shall be co-terminus with the LEASE/CONCESSION Agreement dated _____ 201X unless otherwise terminated with the mutual consent of the Parties; save and except that all dues of the Maha-Metro should have been fully paid/ discharged. No variation of this Agreement shall be valid or effective unless agreed to in writing by all the parties.
19. In consideration of the services provided by it the Escrow Agent shall be paid by CONCESSIONAIRE Rs. _____/- (_____) per month. The Licensee shall be liable and responsible to pay the charges to the Escrow Agent and the Escrow Agent shall not have any claims against Maha-Metro for the same.
20. The CONCESSIONAIRE, Maha-Metro and the Escrow Agent hereby agree and undertake not to disclose any information relating to the provisions of this Agreement to any third party or use the information for any purpose not related to the Licensed Space except with the prior written consent of the other parties.
21. The rights of the Maha-Metro under this Agreement shall be in addition and without prejudice to all other rights Maha-Metro has under the Concession Agreements.
22. All terms used in this agreement not expressly defined herein shall have the meaning assigned thereto in the LEASE / CONCESSION Agreement

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

SIGNED SEALED AND DELIVERED

For and on behalf of Maha-Metro by:

(Signature)

(Name)

(Designation)

For and on behalf of the Concession by CONCESSIONAIRE.

(Signature) _____

For and on behalf of the (Escrow Agent _____)

(Signature)

In the presence of:

1)

2)

3)

Schedule L : Terms and Conditions to be included in the Sub-Lease Agreement

[Note: This Annexure enumerates the terms / clauses which the Concessionaire shall compulsorily include in the Sub-Lease Agreement to be executed with Sub-Lessee]

1. The Land has been given to the Concessionaire on Lease basis for 60 years vides Lease Agreement dated ----- . The Concessionaire has entered into Contract Agreement dated for Development and Operation of Part of land demarcated for Property Development at Kh. No. 98,99,100,101 at Mz. Dhantoli near Sitaburdi Interchange Station of Nagpur Metro Rail Project on Public Private Partnership (DBFOT) Basis. AND WHEREAS, in terms of the Concession Agreement dated, Concessionaire has duly obtained the completion certificate from the Local Authority and MAHA-METRO. The Sub-Lessee accepts and agrees to observe and abide by all the terms and conditions of the Concession Agreement dated..... This Sub-Lease Agreement shall be co-terminus with the Concession Agreement dated.....
2. The Sub-Lessee shall not have any right to make any structural changes in the Sub- Leased Area or to construct, erect, alter, or otherwise deal with the Sub-Leased Area except to renovate carry out interior finishing works, partitions, furnishing and fitting / refurbishing to the extent necessary for its personal or business uses. The sub-lessee undertakes not to carry out any construction work in the vacant area of the said land. The sub-lessee shall not use the premises for any other purposes except permitted by the Concessionaire. The sub-lessee shall not do anything which may cause nuisance or likely to cause annoyance to other sub-lessees, visitors etc. The sub-lessee shall not use the premises for any illegal or immoral purposes. The sub-lessee undertakes to indemnify Concessionaire and MAHA-METRO against any penal action, damages or loss, caused due to non-observance of any terms and conditions of this Agreement.
3. The Sub-Lessee has read and understood the terms of Concession Agreement executed between the Authority and the Concessionaire, and has / have fully understood the rights & obligations of and restrictions imposed on the Concessionaire under the Concession Agreement.
4. As part of and in consideration of entering into this Sub-Lease Agreement, and the covenants and warranties on the part of the Sub-Lessee herein, in accordance with the terms and conditions set forth herein, hereby, offers the Sub-Leased Area, as described in [●] together with the common areas and inventory mentioned in Schedule [●], to the Sub-Lessee, commencing from the date hereof, on an "as is where is" basis, for the duration of the Sub-Lease Term for usage as are permitted under this Sub-Lease Agreement.

5. The Sub-Lessee shall not have any right to further sub-lease or transfer the Sub-Leased Area (either partly or fully) to any other party. However, on written request of the Sub-Lessee, the Concessionaire may transfer this Sub-Lease to another party.
6. The rights of the Sub-Lessee shall be only that of a user for the purpose specified in this Sub-Lease Agreement and subject to terms and conditions as contained in the Concession Agreement.
7. The Sub-Lessee shall not have any right to make any structural changes in the Sub- Leased Area or to construct, erect, renovate, alter, or otherwise deal with the Sub-Leased Area except to carry out interior finishing works, partitions, furnishing and fitting to the extent necessary for its personal or business uses.
8. The Sub-Lessee shall at all times during the Sub-Lease Term keep the Sub-Leased Area in good and working conditions and shall not damage or allow any damage by its visitors/customers/business clients either to the Sub-Leased Area or to the common areas in the assets.
9. The sub-Lease shall be for the use of the Site, during the subsistence of the Leased Period only with a clear stipulation that all such sub-Lease granted shall terminate simultaneously with the termination of the Lease Agreement, including on sooner determination of the Lease Period for any reason whatsoever. All contracts, agreements or arrangements with Sub-Lessee shall specifically stipulate this covenant of termination of the rights of the Sub-Lessee, and further that such Sub-Lessee shall not have any claim or seek any compensation from MAHA-METRO for such termination.
10. In the event of the Concessionaire being substituted by a Nominated Company in terms of the Concession Agreement, all the Sub-Lease Agreements shall stand transferred and novated from the Concessionaire to the Nominated Company and the Nominated Company shall act as the Concessionaire thereafter.
11. The Sub-Lessee hereby undertakes and confirms that it shall indemnify and keep indemnified the Concessionaire and/or Authority from and against all actions, demands, claims, liabilities, losses, damages, costs, expenses and other liabilities whatsoever brought against, suffered or incurred by the Concessionaire and/or Authority resulting from or by reason of breach, non-observance or non-performance by the Sub-Lessee of any of its obligations set out in this Sub-Lease Agreement.
12. The Sub-Lessee hereby undertakes and confirms that It shall obtain or cause to be obtained and shall maintain throughout the Sub-Lease Term all regulatory approvals, clearances, permits and consents, including any and all environmental approvals, that may be required in order for the Sub-Lessee to carry on its business activities and to undertake its obligations in accordance with the terms of this Sub-Lease Agreement.

13. The Sub-Lessee hereby undertakes and confirms that shall not do or permit to be done on the Sub-Leased Area, any activity, which may be contrary to any Applicable Laws and Applicable Permits and it shall in enjoyment of its rights hereunder and fulfillment of its obligations hereunder, always comply with the Applicable Laws and Applicable Permits.
14. The Sub-Lessee shall indemnify the Concessionaire and/or Authority in respect of any applicable charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Sub-Lessee of water, electricity, telephone, communication facilities and other utilities and services.
15. The Sub-Lessee shall have only user interest in relation to the Sub-Leased Area and shall have no leasehold right or title to the Sub-Leased Area. The Sub-Lessee agrees and acknowledges that it has only user interest in the Sub-Leased Area and that the same shall be incapable of conversion into leasehold or freehold interest.
16. The Sub-Lessee agrees, confirms and undertakes that it no right to sub-license, sublease, assign, underlet or sub-let or part with the possession of the Sub-Leased Area or any part thereof.
17. The Sub-Lessee acknowledges that it has perused all the documents pertaining to the Project and has been made aware of the Concessionaire's rights and obligations pursuant to the Concession Agreement.
18. The Concessionaire shall be solely responsible for the design, construction and maintenance of the Project including Assets and Project Utilities.
19. The Concessionaire shall be solely responsible for the due performance of its obligations as specified in the Concession Agreement and this Sub-Lease Agreement, and Authority shall not be held liable for any claims pursuant to any loss and/or damages suffered by the Sub-Lesseees or any third party on account of Concessionaire's performance or non-performance of its obligations pursuant to the terms of this Sub-Lease Agreement.