

Draft Document for discussion on re-development of Railway Station

27th August, 2021

A draft Model Concession Agreement (MCA) for re-development of Railway Stations has been prepared and is uploaded on the Ministry of Railways website (<http://www.indianrailways.gov.in/railwayboard>)

All stakeholders are requested to review the draft MCA and provide written comments (if any) by or before September, 3, 2021. The comments can be sent preferably in electronic form, on the email: stationdevelopment2@gmail.com.

It is clarified that the draft MCA is solely for the purposes of suggestion with stakeholders on the proposed project. These are not to be construed as an offer or invitation to the prospective applicants or any other person. Further, the information contained herein is neither exhaustive nor final and is subject to change.

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Redevelopment of Railway Stations

MODEL CONCESSION AGREEMENT

****Month** **Year****

**Ministry of Railways
Government of India**

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CONCESSION AGREEMENT^s

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

BETWEEN

1 THE PRESIDENT OF INDIA represented by General Manager, **** Railway / Rail Land Development Authority and having its principal offices at –..... (herein after referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

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

WHEREAS:

- (A) The Authority had resolved to redevelop the existing Railway Station at *****¹ on design, build, finance, operate and transfer (the “**DBFOT**”) basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into between the Authority and the Concessionaire.
- (B) The Authority had accordingly invited proposals by its Request for Qualification No.****dated *** (the "Request for Qualification" or "RFQ") for short listing of bidders for construction, operation and maintenance of the above referred Railway Station on DBFOT basis and had shortlisted certain bidders including, inter alia, the {the selected bidder/consortium comprising and (collectively the "**Consortium**") with as its lead member (the "**Lead Member**")}.
- (C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.

¹ s Instructions for Bidders

The draft Concession Agreement issued to the Bidders may be customised for bid-specific purposes in accordance with the instructions below: **Note 1:** The provisions in curly brackets are to be retained in the draft Concession Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid-specific particulars in the Concession Agreement.

Note 2: Blank spaces are to be retained in the draft Concession Agreement and shall be suitably filled by the Bidders after the issue of LOA in order to reflect bid-specific particulars in the Concession Agreement. However, blank spaces shall be retained in all Schedules which contain formats that are to be used after the Concession Agreement is executed.

- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/Consortium} and issued its Letter of Award No. dated² (hereinafter called the “LOA”) to the {selected bidder/ Consortium} requiring *inter alia*, the, the execution of this Concession Agreement within [45 (forty-five)] days of the date of issue thereof.
- (E) The selected bidder/Consortium has since paid the Project Development Fee of Rs [****]³ and promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- (F) {By its letter dated⁴, the Concessionaire has also joined in the said request, of the selected bidder/Consortium, to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof}⁵.
- (G) The Authority has {agreed to the said request of the selected bidder/ Consortium and the Concessionaire and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.
- (H) {The Authority may nominate in writing, a Project Implementation Agency to act aon its behalf under this agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of Authority under this Agreement}⁶

OR

{The Authority has nominated Indian Railway Stations Development Corporation (IRSDC) as Project Implementation Agency to exercise any rights or perform and fulfill any obligations of Authority under this agreement, except as listed in Schedule ****. IRSDC as nominated agency shall interact with Concessionaire as a single Nodal Agency and take up the entire project including bidding process, project implementation, supervision and management of the concession agreement for the entire term. For the items

² Relevant details to be inserted

³ Relevant details to be inserted

⁴ Relevant details to be inserted.

⁵ Relevant details to be inserted.

⁶ For tenders of RLDA

listed in Schedule ***. IRSDC shall take prior approval of the Authority before conveying any decision to the Concessionaire}⁷

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:

⁷ For tenders of IRSDC

Article 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

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;

“Additional Termination Payment” means the amount, if any, payable upon Termination, on account of the Adjusted Depreciated Value of Specified Assets, as further limited by the provisions of Clauses 9.19.1, 9.19.2 and 9.19.3, as the case may be;

“Adjusted Depreciated Value” means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three per cent) based on the written down value method);

“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;

“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 Railway Station [and the Station Estate Development] during the subsistence of this Agreement;

“Appointed Date” means the date on which Financial Close is achieved and every Condition Precedent is either satisfied or waived, as the case may be, in accordance with the

provisions of this Agreement, and such date shall be the date of commencement of the Concession Period;

“**Approved Valuer**” means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100 cr. (Rupees one hundred crore) each in value;

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

“**Authority Default**” shall have the meaning as set forth in Clause 9.17.1;

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

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

“**Bid**” means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof and “**Bids**” shall mean the bids submitted by any and all pre-qualified bidders;

“**Bid Date**” means the last date on which the Bid may have been submitted in accordance with the provisions of the Request for Proposals;

“**Business Day**” a reference to a business day shall be construed as reference to a day (other than a Sunday) on which banks in [Delhi] are generally open for business;

“**COD**” or “**Commercial Operation Date**” shall have the meaning as set forth in Clause 4.20.1;

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

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

- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, until the expiry of 1 (one) year from the COD:

- i. which causes the aggregate holding of the {Selected Bidder}, together with its Associates, to decline below 51% (fifty one percent) in the total Equity, if the Selected Bidder is not a Consortium,
- ii. which causes the aggregate holding of the {Consortium member whose experience has been evaluated for Technical Capacity and/ or Financial Capacity}, together with its Associates, to decline below 51% (fifty one percent) in the total Equity, if the Selected Bidder is a Consortium having only one member whose experience has been evaluated for Technical Capacity and/ or Financial Capacity;
- iii. which causes the aggregate holding of {each Consortium member whose experience has been evaluated for Technical Capacity and/ or Financial Capacity}, together with its Associates, to decline below 26% (twenty six percent) each in the total Equity, if the Selected Bidder is a Consortium having more than one member whose experience has been evaluated for Technical Capacity and/ or Financial Capacity;

“Change of Scope” shall have the meaning as set forth in Clause 4.21.1;

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

“Completion Certificate” shall have the meaning as set forth in Clause 4.17;

“Concession” shall have the meaning as set forth in Clause 2.2.1;

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

“Concession Fee” shall have the meaning as set forth in Clause 8.1;

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

“Concessionaire Default” shall have the meaning as set forth in Clause 9.16.1;

“Conditions Precedent” shall have the meaning as set forth in Clause 2.3.1;

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

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

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement;

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

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

“Damages” shall mean 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 ;

“Day” any reference to day shall mean a reference to a calendar day.

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

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

“Dispute” shall have the meaning as set forth in Clause 10.7.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Clause 10.7;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 9.22.1;

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

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

“Encumbrances” means, in relation to the Railway Station [and Station Estate Development], any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Railway Station [and Station Estate Development], where applicable herein but excluding utilities referred to in Clause 3.8;

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

“Escrow Agreement” shall have the meaning as set forth in Clause 8.10.2;

“Escrow Bank” shall have the meaning as set forth in Clause 8.10.1;

“Escrow Default” shall have the meaning as set forth in Escrow Agreement;

“Exempted Vehicle” means a vehicle exempted from payment of Fee under and in accordance with the Fee Notification and this Agreement;

“Exempted Person” means a person exempted from payment of any charges including Fee as per the extant policy of Ministry of Railways and in accordance with the Fee Notification and this Agreement;

“Existing Contracts” shall mean the contracts relating to Project Assets, entered into between the Authority and third parties, which are subsisting on the date of this Agreement, as listed in Schedule-E and made available for inspection by the Concessionaire prior to bidding for the Project, but shall not include contracts relating to any works in progress;

“Fee” means the charge(s) levied on and payable by a person for use of the Railway Station in accordance with the provisions of the Railways Act, 1989 and provisions of the Fee Notification. Fee shall include Station Development Fee and additional fee applicable on Platform Tickets;

“Fee Notification” means the Notification issued by the Government, substantially in the form set forth at Schedule-M;

“Financial Close” means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

“Financial Default” shall have the meaning as set forth in Substitution Agreement;

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

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

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 2.8.3;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 9.1;

“GOI” means the Government of India;

“Government” means Ministry of Railway;

“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 developer, contractor, operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner and for providing safe, economical, reliable and efficient services on the Railway Station [and Station Estate Development];

“Government Buildings” shall have the meaning ascribed to it in Clause 4.8.1;

“Government Instrumentality” means any department, division or sub-division of the Government of India or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body, including Panchayat, under the control of the Government of India or the State Government, as the case may be, and having jurisdiction over all or any part of the Railway Station 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 Clause 10.3.3;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Clause 10.3.3;

“Independent Engineer” shall have the meaning as set forth in Clause 7.1.2;

“Indirect Political Event” shall have the meaning as set forth in Clause 9.1.2;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Clause 8.11, and includes all insurances required to be taken out by the Concessionaire under Clause 8.11.2 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Key Performance Indicators” shall have the meaning as set forth in Clauses 5.27

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

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

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

“**Licensed Premises**” shall have the meaning as set forth in Clause 3.3.2;

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 5.3.1;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 5.4.1;

“**Maintenance Requirements**” shall have the meaning as set forth in Clause 5.2;

“**Master Plan**” means the Master Plan for the Railway Station as specified in Schedule-A;

“**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**” means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

“**Non-Political Event**” shall have the meaning as set forth in Clause 9.1.1;

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

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the Government, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M contract, fee 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;

“**Occupied Buildings**” shall have the meaning as set forth in Clause 4.9.1;

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

“PHT” or **“Peak Hour Traffic”** means the number arrived at by dividing the total number of passengers who used the Railway Station in a Peak Hour on every day during the immediately preceding Accounting Year by 365 (three hundred and sixty five);

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 8.12.2;

“Parcel Facilities” shall mean buildings, structures and equipment, as the case may be, for handling of incoming and outgoing parcel, including short-term warehousing thereof;

“Parcel Handling Charges” shall mean the amount payable by Government to Concessionaire for undertaking handling of parcels and O&M of Parcel Facilities as indicated in this Agreement;

“Parking Facilities” means the land and buildings situated on the site and earmarked for pick-up/ drop-off facilities and parking of motor vehicles, as described and demarcated in Schedule-A and Schedule-B;

“Peak Hour” means an hour when the number of persons using the Railway Station is the highest during the course a day;

“Performance Security” shall mean an irrevocable and unconditional guarantee from a Bank submitted to the Authority on or prior to the date of execution of this Agreement by the Concessionaire for the performance of its obligations hereunder;

“Platform Ticket” shall be the valid charges payable for use of the Station Building as per the extant policy of Ministry of Railways and which includes the additional Fee as per the Fee Notification payable by any User (other than a passenger holding a valid travel ticket or any Exempted Person) in terms of the Agreement,

“Police” means a law enforcement agency and includes the state police, Railway Protection Force or any other organization empowered under Applicable Laws to exercise powers and discharge functions relating to security, crime prevention or maintenance of law and order;

“Political Event” shall have the meaning as set forth in Clause 9.1.3;

“Project” means the construction, operation and maintenance of the Railway Station comprising Station Development [and Station Estate Development] in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“Project Agreements” means this Agreement, the Financing Agreements, construction contracts, O&M contracts, all agreements relating to [Station Estate Development and] any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto [Rs. 25 crore (Rupees twenty five crore)⁸];

“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 licence, [lease], Right of Way or otherwise;
- (b) tangible assets such as civil works & equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices;
- (c) Project Facilities situated on the Site;
- (d) [buildings and immovable fixtures or structures forming part of Station Estate Development;]
- (e) all rights of the Concessionaire under the Project Agreements;
- (f) financial assets, such as receivables, security deposits etc;
- (g) insurance proceeds; and
- (h) Applicable Permits and authorisations relating to or in respect of the Railway Station [and/or and Station Estate Development];

“Project Development Plan” shall mean a Plan which should consist of the following to enable an insight into the understanding of the Authority’s requirement and preparedness of the Concessionaire towards the development of Railway Station [and the Station Estate Development];

- a) Proposed overall work schedule in network form with written description on project planning, scheduling, monitoring & control system (proposed).
- b) Organizational set up for planning, scheduling, monitoring & control at Concessionaire’s Design, office and Site office. Function wise resource deployment schedule (head office & Site manpower and construction equipment).
- c) Project Approach & execution methodology and softwares to be used for Safety Requirements, project planning and material control;
- d) Investigations carried so far like geo-technical studies, surveys etc.; and
- e) Design basis report which shall include a project description, listing of key design criteria, and design assumptions and how the design will comply with applicable or relevant and appropriate requirements of codes and manuals.

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

⁸ This may be fixed at the higher of: (a) 2% (two per cent) of Total Project Cost and (b) Rs. 25 (twenty five) crore.

“**Provisional Certificate**” shall have the meaning as set forth in Clause 4.18.1;

“**Punch List**” shall have the meaning ascribed to it in Clause 4.18.1;

“**Railways Act**” means the Railways Act, 1989;

“**Railway Administration**” shall mean the ‘Railway Administration’ as defined in the Railways Act, 1989;

“**Railway Station**” means the Railway station located as set forth in Recital A and includes the Station Building, approach roads, Parcel Facilities, the kerbside and approach roads, pick-up and drop-off facilities, multi-modal integration, parking and the land appurtenant thereto and all other Project Assets forming part of the Site, and shall exclude Station Estate Development;

“**Re.**”, “**Rs.**” or “**Rupees**” or “**Indian Rupees**” means the lawful currency of the Republic of India;

“**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 Railway Station [and the Station Estate Development] in accordance with this Agreement;

“**Safety Commissioner**” shall have the meaning as set forth in Clause 5.15.2;

“**Safety Consultant**” shall have the meaning as set forth in Clause 7.8;

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

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

“**Site**” shall have the meaning as set forth in Clause 3.2;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Railway Station, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Railway Station submitted by the Concessionaire to, and expressly approved by, the Government;

“**Specified Assets**” means and includes all or any of the following:

(a) such of the Project Assets (excluding all buildings and immovable fixture or structures forming part of Station Estate Development) which are constructed, acquired or installed after the 3rd(third) anniversary of COD [and];

[(b) all buildings and immovable fixtures or structures forming part of Station Estate Development;]

“**State**” means the State or the Union Territory, as the case may be, in which the Railway Station is situated;

“**State Government**” means the government of that State or Union Territory;

“**Station Building**” means the building of the Railway Station situated on the Site and the land appurtenant thereto, and which is access controlled for applicability of Fee, as described and demarcated in Schedule-A and Schedule-B;

“**Station Development Fee**” or “**SDF**” means the Fee levied, collected and appropriated by the Authority from the passengers in accordance with this Agreement and the Fee Notification set forth in Schedule-M.

“**Station Termination Payment**” for Railway Station means an amount equal to the lower of the amounts determined pursuant to sub-clause (a), (b) and (c) below.

(a) The sum of the following amounts as on the Transfer Date as certified by the Independent Engineer:

(i) Adjusted Depreciated Value thereof;

(ii) Actual costs incurred by the Concessionaire in the works-in-progress handed over to the Authority by the Concessionaire as on the Transfer Date.

(b) Sum of the values of the assets and/ or costs incurred, as the case may be, set out in sub-clause (a) above, as determined by an Approved Valuer, who shall be selected and appointed by the Authority within 15 (fifteen) days of the Transfer Date, and who shall submit its determination within 30 (thirty) days of appointment thereto, and

(c) Total Project Cost;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any re-enactment or amendment thereof, for the time being in force, and appointed in accordance with Clause 8.12.2;

“**Station Development**” means the construction, operation and maintenance of the Railway Station 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;

“**Station Development Fee**’ or “**SDF**” means the fee as per the Fee Notification to be collected and appropriated by the Authority from the passengers in terms of the Agreement.

“Station Estate Development” shall have the meaning as set forth in Clause 2.2.4;

“SQI” means Railway Station Service Quality Index determined in terms of User survey undertaken in accordance with this Agreement;

“Station Revenue” shall refer to and mean all the monies (gross) received from the Railway Station by the Concessionaire, excluding applicable Tax, pursuant or incidental to – (i) any payments, deposits, advances, registration payments, installments received from counterparties to the Existing Contracts (upon Novation of the same in favour of the Concessionaire), (ii) the Sub-License of the Licensed Premises (iii) exploitation in any permitted manner of the Railway Station by any person, whether at the instance of the Licensee, including but not limited to capital receipts, upfront Sub-License payments, deposits, advances, registration payments, installments received from Licensee, Sub-License charges, and (iv) revenue earned pursuant to the services provided or to be provided by the Concessionaire to the Sub-Licensee or any person exploiting in any manner whatsoever the Project Assets in the Licenses Premises such as parking of vehicles, signage, play area, events, road shows, promotional activity, hoardings, kiosks, counters, advertisements outside the Station Building, and advertisements at platforms and inside Station Building and Co-Branding. For avoidance of doubt, the Station Revenue excludes Station Development Fee, Platform Ticket, Parcel handling charges and Parcel storage charges;

“Substitution Agreement” shall have the meaning as set forth in Clause 10.1.3.1;

“Suspension” shall have the meaning as set forth in Clause 9.11;

“Taxes” means any Indian taxes including excise duties, customs duties, GST, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Railway Station [and Station Estate Development] charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

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

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

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

- (a) the capital cost of the Project, as set forth in the Financial Package; and
- (b) a sum of [Rs. ***** crore (Rupees ***** crore)];

provided also that the Total Project Cost shall not exceed the actual capital cost of the Project;

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

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

“**Vesting Certificate**” shall have the meaning as set forth in Clause 9.25;

1.2 Priority of agreements, clauses and schedules

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

- a) this Agreement; and
- b) all other agreements and documents forming part hereof or referred to herein,

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.2.2 Subject to the provisions of Clause 1.2.1., 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.

Article 2

THE CONCESSION

2.1 Scope of the Project

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

- a) redevelopment, construction and procurement of the Railway Station, on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;
- b) [undertake Station Estate Development in accordance with the provisions of this Agreement;]
- c) operation and maintenance of the Railway Station [and Station Estate Development] in accordance with the provisions of this Agreement; and
- d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

2.2 The Concession

2.2.1 Subject to and in accordance with the provisions of this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Railway Station [and the exclusive rights, licence/lease rights for Station Estate Development as per the Station Estate Lease Deed] (the “**Concession**”) for a period of [30 (Thirty)/45(Forty Five)] years commencing from the Appointed Date. 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 in Clause 2.2.1.

2.2.2 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, [lease] and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- b) finance and construct the Railway Station [and Station Estate Development];
- c) develop, operate and maintain the Railway Station [and the Station Estate Development] and regulate the use thereof by third parties in accordance with the provisions of this Agreement and Applicable Laws;
- d) demand and appropriate Fee [Default Part Funding] and Parcel Handling Charges in accordance with the provisions of this Agreement;
- e) refuse entry to Station Building to any User if the Fee due is not paid in accordance with this Agreement;
- f) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement; and

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

2.2.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 2.2.2, entitle the Concessionaire to construct the Railway Station in accordance with Schedule-B and to make commercial use thereof .

2.2.4 [Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 2.2.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, subject to and in accordance with the conditions stipulated in Clause 6.1, and to exploit such development for commercial purposes (the “**Station Estate Development**”) with the right to [sub-lease,] sub-license any or all parts thereof by means of Project Agreements.]

2.3 Conditions Precedent

2.3.1 Save and except as expressly provided in Clauses 2.3, 3.1, 3.2, 3.3, 3.4, 8.1, 8.2, 8.3, 8.4, 8.5, 8.5, 8.6, 8.7, 8.8, 8.9, 9.11, 9.12, 9.13, and Article 10 other provisions, 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 2.3.1 (the “**Conditions Precedent**”). Provided, however, that a Party may in its discretion grant waiver from satisfaction of any Condition Precedent by the other Party, as the case may be, and to the extent of such waiver, that Condition Precedent shall be deemed to be fulfilled for the purposes of this Clause 2.3.1.

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

- a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clauses 3.4.1 and 3.4.2;
- b) novated the Existing Contracts in favour of the Concessionaire, to the extent such novation does not contravene the provisions of the respective contracts;
- c) granted to the Concessionaire, by means of a power of attorney, the authority to act for and on behalf of the Authority in respect of such of the Existing Contracts which can not be novated in favour of the Concessionaire for any reason;
- d) [procured approval of the Railway authorities in the form of a Master Plan that would enable the Concessionaire to plan bridges/underpasses/subways over or under a railway line in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval]

- e) procured all Applicable Permits relating to heritage status, defence establishments, archeological sites, environmental protection, conservation of the Site and forest clearance:⁹; and
- f) review the Project Development Plan, submitted by the Concessionaire as per terms of this Agreement;

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

- a) executed and procured execution of the Escrow Agreement;
- b) executed and procured execution of the Substitution Agreement;
- c) procured all the Applicable Permits specified in part-I of Schedule-F unconditionally, or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full, and such Applicable Permits are in full force and effect;
- d) executed the Financing Agreements and delivered to the Authority true copies thereof, duly attested by a Director of the Concessionaire;
- e) achieved Financial Close and delivered to the Authority true copies of the Financial Package and the Financial Model as required by Authority, duly attested by a Director of the Concessionaire, along soft copy of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- f) delivered to the Authority {from the Consortium Members, their respective} confirmation of the correctness of the representations and warranties set forth in this Agreement;
- g) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:
- h) prepared and submitted the Project Development Plan got the same reviewed and approved in accordance with the terms of the Agreement;
- i) Providing proof of its shareholding pattern, evidenced by certificates from the authorised signatory of the Concessionaire and;
- j) [demonstrated Construction and O&M Experience as per the provisions of the RFP].

2.3.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.

2.3.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.

⁹ In projects where environmental clearance is restricted to small portions of the Site or to the felling of trees, this Condition Precedent may be deleted and such portions may be included, as necessary, in the Appendix specified in Clause 3.4.2. The guiding principle should be that the obligations of the Concessionaire are predictable and not beyond its control.

2.4 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 20% of the Performance Security .

2.5 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 2.3.2 or other breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to 20% of the Performance Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 3.1.1, terminate the Agreement. Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 2.3.2, no Damages shall be due or payable by the Concessionaire under this Clause 2.5 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 2.3.2.

2.6 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 2.7 and 2.8, and subject to the provisions of Clause 3.1.1, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

2.7 Obligations of the Concessionaire

- 2.7.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Railway Station [and Station Estate Development] and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

- 2.7.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement and conform with and adhere to Good Industry Practice at all other times.
- 2.7.3 The Concessionaire shall install, operate and maintain the equipment necessary and sufficient for handling Users equivalent to 110% (one hundred and ten per cent) of the PHT.
- 2.7.4 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 for obtaining Applicable Permits, other than those set forth in Clause 2.3.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;
 - b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Railway Station [and Station Estate Development];
 - c) perform and fulfil its obligations under the Financing Agreements;
 - d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
 - e) always act in a manner consistent with the provisions of this Agreement and not cause or fail to do any act, deed or thing, whether intentionally or otherwise, which may in any manner be violative of any of the provisions of this Agreement;
 - f) procure that all facilities and amenities within the Railway Station are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
 - g) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - h) provide Parcel handling services and Platform Tickets as per this Agreement;
 - i) transfer the Project Assets to the Authority upon Termination of this Agreement, in accordance with the provisions thereof; [and]
 - j) always act in a manner consistent with the provisions as per Safety Requirements during Construction and Operation Period; [and]
 - k) [adhere to the obligations under the Station Estate Lease Deed.]

2.8 Obligations relating to Project Agreements

- 2.8.1 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.

- 2.8.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 2.8.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 2.8.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall [subject to provisions under the Article 6 in case of Station Estate Development] be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality.

2.9 Obligations relating to Change in Ownership

- 2.9.1 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty five per cent) or more of the total Equity of the Concessionaire; or

- b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior intimation to the Authority and compliance as per requirements from national security and public interest perspective. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

2.9.2 For the purposes of this Clause 2.9.2:

- i. the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- ii. the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- iii. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

2.10 Sole purpose of the Concessionaire

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

2.11 Co-Branding of Railway Station

The Railway Station shall always be known, promoted, displayed and advertised by its official name. However, Concessionaire may develop and implement a co-branding program duly keeping in view various aspects like public good, information clarity, aesthetic looks, vibrant character, façade, safety, identity of Authority and Concessionaire etc. subject to guidelines issued by Ministry of Railways on co-branding, if any, and get it approved from Authority through Independent Engineer.

Article 3

DEVELOPMENT OF PROJECT

3.1 Performance Security

3.1.1 Appropriation of Performance Security or Deemed Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, failing which the Authority shall be entitled to terminate this Agreement in accordance with Clause 9.15. Upon such replenishment or furnishing of a fresh Performance Security, as the case may be, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Clause 9.15. Further in case of Deemed Performance Security, upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriation.

3.1.2 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement.

3.1.3 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 3.1.2, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 3.1.3, as if it is a Performance Security under Clause 3.1 for and in respect of the entire Concession Period (the “Deemed Performance Security”). The Deemed Performance Security shall be unconditional and

irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 3.1.1, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge and the right to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under this Clause 3.1.3.

3.1.4 References to Performance Security

References to Performance Security occurring in this Agreement shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire, and the amount so determined shall be appropriated from the Performance Security submitted in any form or manner or Deemed Performance Security, as the case may be.

3.2 The Site

The site of the Railway Station [and Station Estate Development] shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee for Station Development [and licensee/lessee for Station Estate Development] under and in accordance with this Agreement (the “Site”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for the Railway Station [and Station Estate Development] as set forth in Schedule-A.

3.3 License, [Lease,] Access and Right of Way

- 3.3.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 3.3.2 In consideration of the Concession Fee [and Annual Lease Rent under the Station Estate Lease Deed,] this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, [lease,] leave and license rights, as the case may be, in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto [(the “**Leased/Licensed Premises**” on lease/ licence for Station Estate Development and/or] “**Licensed Premises**” on license for Station Development”), in terms of this Agreement free of any Encumbrances and encroachment, to develop, operate and maintain the said Licensed Premises [and/or Leased Premises,] together with all and

singular rights, liberties, privileges, easements and appurtenances whatsoever to the said [Leased Premises and/or] Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes and conditions permitted under this Agreement, and for no other purpose whatsoever.

- 3.3.3 The [lease,] license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that does not interfere with or hinder or otherwise except as provided under Clause 4.2, obstruct Railway operations (including without limitation, passenger and goods movements) at the Railway Station (or otherwise) at all times during the Concession Period.
- 3.3.4 Subject to the provisions of Clause 3.4, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Site 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 and physical condition of the Site.
- 3.3.5 **Protection of [Leased Premises and/or] Licensed Premises from Encumbrances**
During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.
- 3.3.6 It is expressly agreed that the [lease and] license, granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the [lease and] license, upon the Termination of this Agreement for any reason whatsoever.
- 3.3.7 The Concessionaire hereby irrevocably appoints the Authority (acting directly or through a nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license [and 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 authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

3.4 Procurement of the Site

- 3.4.1 Pursuant to the notice specified in Clause 2.3.2, Authority Representative and the Concessionaire, shall, together with the relevant officials of the Railway, within [60] days from the date of signing of this Agreement, undertake a joint inspection and prepare and execute a joint inventory (the “**Joint Inventory for Site**”) of the existing structures, assets and utilities on the Site, and shall further record their quality, condition, functionality, in accordance with the requirements of the Handover Protocol. The handover protocol proposed by Authority shall outline the zone as per Master Plan, area to be handed over (sqm) and date of handing over by Authority, the “**Handover Protocol**”.
- 3.4.2 Based on the Joint Inventory, and the terms of the Handover Protocol the Concessionaire shall be granted the Right of Way to the Site. Such Handover Protocol shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. The Concessionaire and the Authority Representative shall execute a handing over note (substantially in the form set forth in Handover Note), in this regard setting out, in detail, the Site inventory as on the date of such handing over of the right of way of respective parcels.
- 3.4.3 The Parties agree that the components of the existing structures and utilities, as are so specifically identified in the respective Joint Inventory, that are required to be handed over by the Concessionaire to Authority (and/ or its nominee, including the relevant Railway), shall upon their removal from the Site, be so handed over by the Concessionaire to Authority (and /or such nominee) at the location so designated under the Joint Inventory, as far as possible, in a proper arranged/ stacked manner. Except such items as identified in the Joint Inventory, the Concessionaire shall have freedom to utilize and/or dispose off the materials not used in the Project.
- 3.4.4 The Parties agree that notwithstanding anything contained herein, on and from the date of submission of Performance Security, the Concessionaire (and his personnel) shall be entitled to request Authority to access the Site, prior to the handing over of the relevant portion of the Site, to undertake the survey, soil exploration, utility mapping, and inspection of the Site, the Joint Inventory contemplated in this Clause 3.4.4, and to undertake the removal of the relevant railway material and equipment as specified in Clause 3.4.3 above. Upon receipt of such request from the Concessionaire, Authority shall endeavour to obtain the approval of the Government for such access by the Concessionaire.
- 3.4.5 [Execution of the Station Estate Lease Deed and] Signing of the Handover Note, in [2 (two)] counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 3.3.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the

Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever.

- 3.4.6 Without prejudice to the provisions of Clause 3.4.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than [10 % (ten per cent)]¹⁰ of the total area of the Site required and necessary for the Railway Station [and Station Estate Development]. For the avoidance of doubt, the Parties acknowledge and agree that the Appendix shall include all lands and buildings which shall continue in their existing form and use until vacant access and Right of Way thereto is provided to the Concessionaire in accordance with the provisions of Clause 4.8.
- 3.4.7 On and after signing the Handover Protocol, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its own cost and expenses.
- 3.4.8 The Authority shall make best efforts to provide and grant, no later than [90 (ninety) days] from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of [Rs. ¹¹1,000 (Rupees one thousand) per day for every 500 (five hundred) square metres] or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured. For the avoidance of doubt, Damages hereunder shall not be payable in respect of the land, buildings and structures specified in Clause 4.9.
- 3.4.9 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the

¹⁰ This shall be upto a maximum of 10% of the Site to be handed over to the Concessionaire. Further, the Appendix shall not include any area which is essential for timely commencement of Construction Works.

¹¹ Quantum of damages to be paid by the Authority to the Concessionaire to be decided as per project specific requirements.

purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 4.1.2.

3.5 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right of way required by it in connection with access to the Site.

3.6 Access to the Authority and Independent Engineer

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

3.7 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the concession granted to the Concessionaire under this Agreement. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.

3.8 Existing utilities and roads

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

3.9 Shifting of obstructing utilities

- 3.9.1 The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility including electric lines, water/gas 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 Railway Station [and Station Estate Development]. In the

event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

- 3.9.2 The Parties expressly acknowledge and agree that the Total Project Cost includes a sum of Rs. *** cr. (Rupees ***** crore) to be expended on shifting of utilities under and in accordance with the provisions of Clause 3.9.1. The Concessionaire agrees and undertakes that upon receipt of a notice from the Authority to this effect, it shall transfer the amount specified therein to the entity (other than Railways) owning the relevant utility for meeting the expenditure on the specified shifting of utility on behalf of the Authority. The Parties further agree that any expenditure in excess of the aforesaid amount shall be borne entirely by the Authority. The Parties also agree that in the event any part of the aforesaid amount remains unspent as on COD, the Concessionaire shall transfer such unspent balance to the Authority within a period of 30 (thirty) days from COD.

3.10 New utilities and transport systems

- 3.10.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify, access to, and use of the Site for laying telephone lines, water/gas 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.

3.11 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its general arrangement drawings, detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
- (b) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and

3.12 Master Plan and Architectural Design

- 3.12.1 The Concessionaire shall procure that the construction of Railway Station shall at all times conform to Applicable Laws and the provisions of the Master Plan specified at Annex-II of Schedule-A.

- 3.12.2 The Concessionaire shall conform to the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials (the "Architectural Design") specified in Schedule-I.

3.13 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, copies of all architectural drawings in conformity with the Architectural Design and Drawings as required, to the Independent Engineer for review.
- (b) By submitting such drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including the field construction criteria related thereto, are in conformity with the Scope of the Project, Specifications and Standards, Applicable Laws and Good Industry Practice.
- (c) Within 15 (fifteen) days of the receipt of the architectural drawings in conformity with the Architectural Design and Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards and particular reference to conformity of architectural drawings with the Architectural Design or the aesthetic quality thereof and their harmony with the environment. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto, beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk; Provided, however, that in case of the structures above or below the running lines such as Concourse, Railway Under Bridges or Over Bridges, and that have a bearing on safety of trains, structures abutting running railway line/yards, and any other specified item the aforesaid period of 15 (fifteen) days may be extended to 30 (thirty) days.
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards or proposes to modify any element of the Architectural Design, such Drawings and Architectural Design shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings or architectural drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.
- (f) Without prejudice to the foregoing provisions of this Clause 3.13, the Concessionaire shall submit to the Authority for review and comments, its architectural drawings and Drawings relating to the buildings and other structures of the Railway Station, location and layout of the maintenance depots and general arrangement drawings of major

bridges and grade separators, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 3.13 shall apply *mutatis mutandis* to the review and comments hereunder.

- (g) Within 90 (ninety) days of COD, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in hard copies as required, and its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Railway Station as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Railway Station

Article 4

CONSTRUCTION OF THE RAILWAY STATION

4.1 Construction of the Railway Station

- 4.1.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Railway Station as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The days from the Appointed Date as mentioned in Schedule-G shall be the scheduled date for completion of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Railway Station shall be completed on or before the Scheduled Completion Date.
- 4.1.2 The Concessionaire shall construct the Railway Station in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event COD is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 4.1.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. [For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 4.1.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.]
- 4.1.3 In the event that the Railway Station is not completed and COD does not occur within [270 (two hundred and seventy) days] from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.
- 4.1.4 Subject to the provisions of Clause 4.1, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

4.2 No interference with Railway Operational Activities

- 4.2.1 The Concessionaire shall ensure that the Project is undertaken in a manner that does not interfere with or hinder or otherwise obstruct Railway Operational Activities at the

Station (or otherwise). In the event that any such interference or hindrance or obstruction is contemplated, the same shall be specifically identified in the preliminary design, and be subject to the specific approval of the Authority (which approval shall be granted in consultation with Railway). In particular, the Concessionaire has to follow Safety Requirements at all times as per the approved SHE Manual.

- 4.2.3 Provided that where the Project (or its implementation) causes such an interference or hindrance or obstruction to Railway Operational Activities due to works/any activities undertaken by the Concessionaire, it shall promptly intimate the Authority of such incident for imposing emergency blocks and ensure necessary arrangements are made at such sites for safety of Users, passengers and Railway Project Assets.

4.3 Undertaking of the Block Works

- 4.3.1 The Concessionaire agrees that prior to the commencement of the Project, the Concessionaire shall as a part of the preliminary design submission, set out the works which may potentially impede or obstruct the normal railway operations being the traffic and power blocks (collectively “**Block Works**”), and also setting forth therein the proposed times and schedules at which work in respect of the said portion of the Project is proposed to be undertaken. The aggregate period of Power Block and Traffic Block to be provided to the Concessionaire during the Construction Period is specified in Schedule-N. Based on the recommendations of the Independent Engineer and approval of Authority Schedule-N shall be updated once every quarter.
- 4.3.2 The Concessionaire shall, in consultation with the Independent Engineer, submit a quarterly update on Blocks Works undertaken along with the progress of Construction Works.
- 4.3.3 The period for which a Power Block or Traffic Block shall be provided to the Concessionaire shall not be less than two hours or more than four hours generally, period being counted from the time the track and/or the area under the approved block is placed at the disposal of the Concessionaire for undertaking construction and until it is cleared by the Concessionaire. Provided, however that for specific works, a Power Block or Traffic Block, of shorter or longer duration may be provided with mutual consent of the Parties.
- 4.3.4 In the event of any change in the schedule of Power Block or Traffic Block or both, as the case may be, the Authority shall inform the Concessionaire by a notice of not less than 24 (twenty four) hours. Provided, however, that no such notice shall be required in case of a breakdown, accident, law and order disturbance, natural calamity or any other unusual occurrence or Emergency.
- 4.3.5 In the event a Power Block or Traffic Block, as the case may be, is not provided for any day in accordance with the confirmed programme, the Concessionaire shall be compensated by providing an additional Power Block or Traffic Block of equal time during the same

week or the following week. The Parties expressly agree that in the event of any default in providing such additional blocks for compensating the Concessionaire, the Authority shall pay to the Concessionaire Damages at the rate of [Rs.1,000 (Rupees one thousand)] per day for each hour which has not been provided as required hereunder and until such hour is provided during any of the 2 (two) following weeks.

4.3.6 Where any instance of the Block Works implemented by the Concessionaire, exceeds the Approved Block Works, the Concessionaire shall be required to pay the applicable extent of liquidated damages. Such damages shall be constituted as a pre-estimate of the loss and damage occurring to Authority and shall not be by way of penalty, which shall be computed at not less than thrice the applicable rate in respect of such Block Works charges as provided in Schedule-N. Further, in the event the aggregate period utilised by the Concessionaire exceeds the period specified in the updated Schedule-N, the Concessionaire shall pay to the Authority hourly charges at the rate specified therein.

4.3.7 Without prejudice to the foregoing, all Block Works shall be undertaken by the Concessionaire in compliance with the requirements, manuals and specifications, prescribed by the Railway or any other relevant Governmental Authority, in respect of such works.

4.4 Construction of the Station Building

Subject to the provisions of Clauses 4.1 and 3.12, the Concessionaire shall undertake development of the Station Building as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D.

4.5 Development of Parking Facilities

Any development, addition or modification to the Parking Facilities and its surrounding areas shall be as specified in Schedule B [together with provision of Project Facilities as specified in Schedule-C], and in conformity with the Specifications and Standards set forth in Schedule-D, and shall be in harmony with the overall design and environment of the Railway Station.

4.6 Development of Parcel Facilities

Subject to the provisions of Clauses 4.1 and 3.12 the Concessionaire shall undertake development of Parcel Facilities as specified in Schedule-B [together with provision of Project Facilities as specified in Schedule-C], and in conformity with the Specifications and Standards set forth in Schedule-D.

4.7 O&M during the Construction Period

The Concessionaire shall, during the Construction Period, perform the O&M obligations specified in Clause 5.1.1 on a best effort basis. It shall cooperate with and assist the Authority in transferring the O&M functions at the Railway Station in a manner that minimises any adverse effect on the safe and smooth functioning of the Railway Station. The

assistance in transfer of O&M functions shall be completed no later than 1 (one) month of the Appointed Date and for this purpose the Authority and the Concessionaire shall prepare and agree upon a transition plan no later than 120 (one hundred and twenty) days from the date of this Agreement.

4.8 Construction of Government Buildings

- 4.8.1 The Concessionaire shall construct the buildings specified in Schedule-J for use by the Government for its offices, rest houses, residential flats and associated purposes (the “**Government Buildings**”). The construction shall be undertaken in accordance with Schedule B and Schedule D.
- 4.8.2 Subject to the provisions of Clause 4.8.1, the specifications, design and layout of such buildings shall be provided by the Concessionaire to the Authority within a period of 90 (ninety) days from the Appointed Date. The layout shall be so determined that the total floor area for each category of construction shall not vary by more than 2% (two per cent) of the respective area specified in Schedule-J; provided that the total floor area shall conform to the provisions of Clause 4.8.4.
- 4.8.3 The specifications to be followed for construction of Railway buildings shall be sent by the Concessionaire to the Independent Engineer for review and comments, if any. The Independent Engineer may, in consultation with the Authority, suggest modifications in the specifications or in the floor area for each category specified in Schedule-J; provided that in the event such modifications increase the total cost to the Concessionaire by more than 5% (five per cent) of the cost arrived at on the basis of applicable specifications, the increased cost beyond such 5% (five per cent) shall constitute a Change of Scope.
- 4.8.4 No modification hereunder or by means of a Change of Scope shall reduce the entitlement of the Concessionaire to the land, floor area, height and other parameters relating to [the Station Estate Development or] other commercial use of the Railway Station.

4.9 Phasing of Construction

- 4.9.1 The Parties agree that the land, buildings and structures which are being used by the Government on the date hereof and specified as such in Schedule-J (the “**Occupied Buildings**”) shall continue to remain in such use until the Government Buildings to which the existing users of Occupied Buildings shall shift (the “**New Accommodation**”) in accordance with the provisions of Schedule-J, have been completed and handed over to the Authority after the Independent Engineer has certified that construction thereof within a period as mentioned in Schedule-G is in accordance with the provisions of this Agreement. Any delay in compliance thereof shall lead to payment of Damages by Concessionaire in accordance with the provisions of Clause 3.3.2. For the avoidance of doubt, all Occupied Buildings shall be included in the Appendix referred to in Clause 3.4.2.

4.9.2 Upon taking over the possession of New Accommodation under the Clause 4.9.1, the Government shall vacate the Occupied Buildings and provide vacant access and Right of Way thereto within 30 (thirty) days of taking over such possession. In the event of delay in providing such vacant access and Right of Way for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, the Authority shall pay the Concessionaire Damages in a sum calculated at the rate of [Rs. 50 (Rupees fifty)] per day for every square metre of land or part thereof, commencing from the expiry of such 30 (thirty) days and until such vacant access and Right of Way is procured. For the avoidance of doubt, upon any New Accommodation being completed and offered for possession by the Concessionaire, the Authority shall take possession of such New Accommodation within 15 (fifteen) days from it being offered by the Concessionaire.

4.10 Maintenance of Government Buildings

4.10.1 Notwithstanding anything to the contrary contained in Clauses 5.1 and 5.2, the maintenance and upkeep of Government Buildings shall be undertaken by the Government. Provided that, the Concessionaire shall undertake the repair, rectification or restoration of any structural defects or deterioration occurring till the Defect Liability Period of 3 (three) years from date of completion. Provided that in the event the Independent Engineer determines that the deterioration of any part thereof requires replacement at any time during the Defect Liability Period, the Concessionaire shall undertake such replacement forthwith.

4.10.2 The repair, rectification or restoration works carried out under the provisions of this Clause 4.10.2 shall be completed in conformity with the Specifications and Standards and within such time as the Independent Engineer may specify in accordance with Good Industry Practice. Any failure or default in discharging the obligations hereunder shall be deemed to be a breach of Maintenance Requirements and the provisions of Clauses 5.8 and 5.9 shall apply as if a default has occurred there under.

4.11 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

4.12 Inspection during the Construction Period

During the Construction Period, the Independent Engineer shall inspect the Railway Station at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the

defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

4.13 Tests for Construction Works

- 4.13.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance and relevant Manuals. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests at its own costs and expense in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer.
- 4.13.2 In the event that results of any tests conducted under this Clause 4.13.2 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 4.13.2 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 4.13.2 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. A copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

4.14 Delays during construction

If the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Railway Station is not likely to be completed by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

4.15 Suspension of unsafe Construction Works

- 4.15.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users and pedestrians. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to hereinabove.

- 4.15.2 The Concessionaire shall thereupon carry out remedial measures to secure the safety of suspended works and the Users. Upon receiving the recommendations of the Independent Engineer based on submissions by Concessionaire, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary, and the procedure set forth in this Clause 4.15.2 shall be repeated until the suspension hereunder is revoked.
- 4.15.3 Subject to the provisions of Clause 9.4, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 4.15.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates.

4.16 Tests for completion

- 4.16.1 No later than 30 (thirty) days prior to the likely completion of the Railway Station, the Concessionaire shall notify the Independent Engineer of its intent to subject the Railway Station to Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests.
- 4.16.2 All Tests shall be conducted in accordance with Schedule-K at the cost and expense of the Concessionaire.

4.17 Completion Certificate

Upon completion of Construction Works, and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate for completion (the “**Completion Certificate**”).

4.18 Provisional Certificate

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

4.18.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 4.18.2 may, upon request of the Concessionaire to this effect, be issued for operating part of the Railway Station, if at least 95% of the total construction thereof has been completed.

4.19 Completion of Punch List items

4.19.1 All items in the Punch List shall be completed by the Concessionaire within 120 (one hundred and twenty) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at 0.1% (zero point one per cent) of the Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 4.19.1.

4.19.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 3.12.2.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

4.20 Commercial Operation Date (COD)

4.20.1 The Railway Station or part thereof shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Clauses 4.16 and 4.17, and accordingly the commercial operation date of the Railway Station shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Railway Station or part thereof shall enter into commercial service on COD.

4.20.2 In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Railway Station into commercial service after issuance of Completion Certificate or the Provisional Certificate, as the case may be, or where such delay occurs in the issuance of such certificate by the Independent Engineer for any reason attributable to the Independent Engineer or the Authority, as the case may be, the Concessionaire may declare COD and notify the Authority forthwith.

4.21 Change of Scope

- 4.21.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Clause 4.21.1 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 4.23.
- 4.21.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Clause 4.21.2 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 4.21.3 Any works or services which are provided under and in accordance with this Clause 4.21.3 shall form part of the Railway Station and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

4.22 Procedure for Change of Scope

- 4.22.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 4.22.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.
- 4.22.3 Upon receipt of information set forth in Clause 4.22.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of**

Scope Order”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 4.22.4.

4.22.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Clause 4.22.4.

4.23 Payment for Change of Scope

In the event where Authority has initiated a Change of Scope, within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to [20% (twenty per cent)] of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, [20% (twenty per cent)] of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any dispute, final adjustments thereto shall be made.

4.24 Restrictions on certain works

4.24.1 Notwithstanding anything to the contrary contained in the Clause 4.21, but subject to the provisions of Clause 4.24.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Railway Station by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Railway Station and issuing the Provisional Certificate.

4.24.2 Notwithstanding anything to the contrary contained in the Clause 4.21, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

4.25 Power of the Authority to undertake works

4.25.1 Notwithstanding anything to the contrary contained in Clauses 4.22 and 4.23, the Authority may, after giving notice to the Concessionaire and considering its reply

thereto, award any works or services, contemplated under Clause 4.21.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Authority¹², and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 4.25.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

4.25.2 The works undertaken in accordance with this Clause 4.25.2 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises disruption in operation of the Railway Station. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 4.25.2.

4.26 Reduction in Scope of the Project

4.26.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty per cent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project, and for this purpose, the Parties shall conform to the provisions of Clause 10.2.2. It is further agreed that the liability of the Authority under this Clause 4.26.1 shall not extend beyond waiver of the aforesaid 80% (eighty per cent).

4.26.2 For determining the obligations of the Concessionaire under this Clause 4.26.2, the provisions of Clauses 4.21, 4.22 and 4.24 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

¹² The Authority shall transfer 75% (seventy five per cent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.

Article 5

OPERATION & MAINTENANCE

5.1 O&M obligations of the Concessionaire

5.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Railway Station in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Railway Station 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) high standards of upkeep, ensuring proper facilities, cleanliness, hygiene, proper way finding and multi-modal integration to provide comfortable, safe, and smooth flow of passengers
- (b) permitting safe, smooth and uninterrupted flow of traffic on the Railway Station, including prevention of loss or damage thereto, during normal operating conditions;
- (c) Issuance of Platform Tickets to visitors and Providing Parcel handling services in accordance with this Agreement
- (d) to assist Railway Authorities in minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Railway Station by providing a rapid and effective response and maintaining liaison with emergency services of the State including Railway Authorities;
- (e) carrying out periodic preventive maintenance of the Railway Station;
- (f) undertaking routine maintenance including urgent attention to complaints forwarded by Indian Railways/ railway users through various means;
- (g) undertaking major maintenance such as repairs to structures, and repairs and refurbishment of air-conditioning, ventilation and other equipment;
- (h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorised entry to the Railway Station;
- (i) protection of the environment and provision of equipment and materials therefor;
- (j) operation and maintenance of all communication, control and administrative systems, security equipment's like baggage scanner, CCTV etc., necessary for the efficient operation of the Railway Station and for providing safe, smooth and uninterrupted flow of traffic on the Railway Station;
- (k) complying with Safety Requirements and SHE Manual;
- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (m) To assist Railway authorities in maintaining punctuality and reliability in operating the Railway Station;

5.1.2 The Parties expressly agree that the O&M obligations of the Concessionaire shall not include the following and that the O&M obligations in respect thereof shall be performed by the Government, namely:

- (a) dispatch, reception or stabling of Locomotives and Trains;
- (b) signalling, railway communications, overhead electric lines and railway tracks.;
- (c) ticketing except Platform Tickets, parcel and luggage booking
- (d) on-board catering and other services on trains;
- (e) Tourism facilitation;
- (f) security of the functions and assets specified in this Clause 5.1.2 and provision of security and access control services, including any Railway Police, Railway Protection Force. Provided that the maintenance of the assets (and equipment) relating to security and access control systems shall be undertaken by the Concessionaire.
- (g) any other item incidental thereto.

5.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Railway Station conforms to the maintenance requirements (the “**Maintenance Requirements**”).

5.3 Maintenance Manual

5.3.1 Within three months from the Effective date and once in every three (3) years thereafter, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair, operation and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Railway Station in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements, SHE Manual Good Industry Practice and to meet the Key Performance Indicators, and shall provide copies thereof to the Authority and to the Independent Engineer. The Maintenance Manual shall be revised and updated duly establishing and accounting for the changes in the interim period in relation to factors like technology, public habits, transport systems etc and the provisions of this Clause 5.3.1 shall apply, *mutatis mutandis*, to such revision.

5.3.2 Without prejudice to the provision of Clause 5.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

5.4 Maintenance Programme

5.4.1 Within three months from the Effective date and once in every three (3) years thereafter during the Operation Period, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Railway Station;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures;
- (g) intervals for major maintenance works and the scope thereof; and
- (h) frequency of carrying out intermediate and periodic overhaul of electrical, mechanical and other systems.

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

5.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 5.4.1 and 5.4.2 shall apply *mutatis mutandis* to such modifications.

5.5 Maintenance during Construction Period

5.5.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing buildings, structures and roads of the Railway Station so that their condition is at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic or provide an alternative accommodation, as the case may be, if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld.

5.5.2 Notwithstanding anything to the contrary contained in Clause 5.5.1, the liability of the Concessionaire to undertake maintenance of any part of the Railway Station shall commence from the date on which vacant access and Right of Way thereto has been provided to the Concessionaire for commencing Construction Works thereon.

5.6 Safety, breakdowns and accidents

5.6.1 The Concessionaire shall ensure safe conditions for the Users as per the Safety Requirements, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

- 5.6.2 The Concessionaire's responsibility for rescue operations on the Railway Station shall include safe evacuation of all Users and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth flow of traffic.
- 5.6.3 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 Railway Station, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Railway Station to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority, Zonal Railway and Divisional Railway administration including Divisional Railway control room and Station Master/ Superintendent/ Station Director of the station without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 5.6.4 The Concessionaire shall re-commission the Railway Station or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Railway Station and shall notify the Authority of the same without any delay.

5.7 Closure of a section

The Concessionaire shall not close any section of the Railway Station for undertaking maintenance or repair works, not forming part of the Maintenance Programme, except with the prior written approval of the Independent Engineer which shall in all cases be in consultation with Authority. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission in consultation with Authority with such modifications as it may deem reasonable and necessary in conformity with the Maintenance Manual and Maintenance Programme and a copy of such permission shall be sent to the Authority.

5.8 Damages for breach of maintenance obligations

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

5.8.2 The Damages set forth in Clause 5.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith.

5.9 Authority's right to take remedial measures

In the event the Concessionaire does not maintain and/or repair the Railway Station or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages.

5.10 Overriding powers of the Authority

In the event of a national emergency, civil commotion, important festival/event, exigency or any other act specified in Clause 9.1.2, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Railway Station or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Clause 9.1. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 5.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

5.11 Restoration of loss or damage to the Railway Station

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

5.12 Modifications to the Railway Station

The Concessionaire shall not carry out any material modifications to the Railway Station, save and except where such modifications are necessary for the Railway Station to operate in conformity with the Specifications and Standards, Maintenance Requirements,

Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer and Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal and approval from Authority.

5.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Railway Station 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 Railway Station except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) compliance with a request from the Authority, the effect of which is to close all or any part of the Railway Station.

Provided, that any such non-availability and particulars thereof shall be notified by the Concessionaire to the Authority and the Independent Engineer without any delay:

Provided further that the Concessionaire shall keep all unaffected parts of the Railway Station open to traffic, provided they can be operated safely.

5.14 [O&M of Station Estate Development

The Parties expressly agree that the provisions of Clause 5.1 shall not apply to Station Estate Development; provided, however, that the Concessionaire agrees and undertakes to maintain the Station Estate Development at all times in accordance with Good Industry Practice and Applicable Laws and as per Station Estate Lease Deed.]

5.15 Safety Requirements

- a) The Concessionaire shall comply with the provisions of this Agreement, SHE Manual, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users and other persons present at the Railway Station. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Railway Station, and shall comply with the safety requirements set forth in Schedule-L (the "**Safety Requirements**").
- b) The Authority during the Construction Period, shall appoint an experienced and qualified firm or organisation (the "**Safety Consultant**") for carrying out safety audit of the Railway Station in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

5.15.1 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 and funded in accordance with the provisions of Clause 4.21.

5.15.2 Safety Certification prior to COD

The Authority shall, not later than 4 (four) months prior to COD or the likely COD notified by the Concessionaire, as the case may be, require the Commissioner of Railway Safety (the “**Safety Commissioner**”) to observe any or all the Tests specified in Schedule-K to determine and certify that the Railway Station is safe for entering into commercial service; provided that the Safety Commissioner may require the Concessionaire to conduct or cause to be conducted such additional tests as may be prudent and necessary in accordance with Applicable Laws and Good Industry Practice, and the costs of such additional tests shall be treated as per the provisions of Clause 4.13.

5.16 Operation of Station Building

- 5.16.1 The Concessionaire shall undertake operation and maintenance of the Station Building in accordance with the provisions of this Agreement, Applicable Laws, Specifications and Standards, Maintenance Requirements and Good Industry Practice.
- 5.16.2 The Concessionaire shall regulate the use of the Station Building by third-parties and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement.
- 5.16.3 The Concessionaire shall at all times keep free from obstruction all areas meant for circulation and use by Users.
- 5.16.4 The Concessionaire shall be allowed to provide concierge services as approved by the Authority from time to time. For the avoidance of doubt, it is expressly agreed that all licensed porters operating at the Railway Station shall continue to operate under and in accordance with the terms of their license.
- 5.16.5 The Concessionaire shall provide directions, signs and signals, public announcement systems and enquiry counters to facilitate Users in finding their way to platforms, travel facilities and passenger amenities.
- 5.16.6 The Concessionaire shall procure that the Railway Station is open to Users including on public holidays.

5.17 Users who require special assistance

- 5.17.1 The Concessionaire shall procure that the Railway Station shall meet the travelling needs of elderly persons and physically or visually challenged Users, including the provision of ramp ways, modified toilets, wheel chairs and earmarked parking slots in conformity with Divyang policy of Indian Railways and Specifications and Standards and Good Industry Practice, and at no extra cost to such Users.
- 5.17.2 The Concessionaire shall set up and operate first aid facilities within the Station Building which operates round the clock to provide immediate medical aid.

5.18 Reserved Area

- 5.18.1 The space earmarked for the following entities or purposes, as the case may be, and described in Schedule B shall constitute the reserved area in the Station Building (the “Reserved Area”):
- (a) Authority/Government, for performing the functions specified in Clause 5.1.2;
 - (b) security agencies; and
 - (c) VIP lounge;
- 5.18.2 The control of the Reserved Area shall vest in the Authority/Government. The obligations of the Concessionaire in respect of Reserved Area and its access thereto shall be restricted to maintenance of civil works, structures and Equipment forming part of the Reserved Area and also general facility management like housekeeping, cleaning/dusting as per the directions of the Authority, but it shall have unrestricted access thereto in case of Emergency, fire or other similar event.
- 5.18.3 To the extent electricity and water supply is provided to the Reserved Area through the supply lines controlled by the Concessionaire, it shall maintain the supplies thereof in a non-discriminatory manner as compared to other areas of the Station Building; provided that the Concessionaire may install meters for measuring the supply of electricity and water to the Reserved Area and require the Authority to reimburse the cost thereof, save and except the cost of central air-conditioning as specified in Clause 5.18.3.
- 5.18.4 Notwithstanding anything to the contrary contained in this Clause 5.18 the Authority may transfer the Reserved Area or any part thereof to the Concessionaire or in the event that more space is required for discharging the specified functions in the Reserved Area, the Authority may, with the consent of the Concessionaire, increase the space comprising the Reserved Area on such terms and conditions as may be agreed upon.

5.19 Commercial use of areas at Railway Station

Subject to the provisions of this Agreement and Applicable Laws, the Concessionaire shall procure that the spaces earmarked and specified in Schedule- B are used for purposes other than the Negative List as outlined in Schedule-B.

5.20 Project Facilities

The Concessionaire shall provide and operate Project Facilities such as Passenger amenities including ticketing counters, pedestrian facilities, waiting rooms, toilets, tree plantation, landscaping, facilities for the physically or visually challenged and for elderly persons, lifts and escalators, signage, [public address system and public information systems], at its own cost and expense and without any cost to the Authority or Users.

5.21 Electric and water supply

- 5.21.1 The Concessionaire shall procure water and electricity, as may be necessary for operation of the Station Building, from the respective local utilities upon payment of charges in accordance with Applicable Laws. For the avoidance of doubt, it is agreed that the Concessionaire shall install its own plant for standby supply of electricity as may be necessary for operation of the Railway Station.
- 5.21.2 The Concessionaire may seek supply of water and electricity from the Authority, the Authority on its part may agree to provide such connections, provided that it does not hamper its requirement. In case the Authority agreed to supply water and electricity, the Concessionaire shall at its cost install the meter, further the Concessionaire shall pay for consumption of such water and electricity at actuals as per then prevailing tariff and Taxes if any, as applicable.

5.22 Operation & maintenance of Parcel Facilities

- 5.22.1 The Concessionaire shall operate and maintain the Parcel Facilities in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 5.22.2 The Concessionaire shall procure that the Parcel Facilities shall include adequate parcel space, handling equipment, storage and handling of perishable and dangerous goods, space for customers, inspection area, office space to government agencies for discharging their statutory functions, automation systems, electronic data interchange (the “EDI”), screening equipment, storage facilities, mail handling and courier shipments, in accordance with the provisions of this Agreement and Good Industry Practice. The concessionaire will undertake the activity of storage, handling, carting and loading/unloading the parcels. The concessionaire will be obliged to make arrangement for inspection of such activities to the authorized persons by the authority.
- 5.22.3 **Restrictions on use of Parcel Facilities**
Without prejudice to the provisions of Clause 2.2.2, the Concessionaire may provide warehousing for parcel for a period not exceeding [7 (seven)] days on payment of such charges as the Concessionaire may determine [and may also recover demurrage for any additional period of storage].

5.23 Monthly status reports on Railway Station Operation & Maintenance

- 5.23.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly

report stating in reasonable detail the condition of the Railway Station including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer or the Authority. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

5.23.2 During Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly management report which shall include a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same; and
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Railway Station's operational performance;

5.24 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Railway Station relating to the safety and security of the Users and Railway Station. A weekly and monthly summary of such reports shall also be sent within 3 (three) days of the closing of each week and month, as the case may be. For the purposes of this Clause 5.24, accidents and unusual occurrences on the Railway Station shall include:

- (a) death or injury to any person;
- (b) communication failure affecting the running of trains;
- (c) smoke or fire;
- (d) any damage or obstruction on the tracks;
- (e) any damage or obstruction that affects Users of the Railway Station;
- (f) flooding of tracks or any part of the Railway station; and
- (g) such other relevant information as may be reasonably required by the Authority or the Independent Engineer.

5.25 Inspection during O&M period

The Independent Engineer shall inspect the Railway Station System at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection. The independent engineer shall duly consider the references of Government/ Authority/ any other statutory body and submit action taken report.

5.26 Traffic regulation by the Concessionaire

- 5.26.1 The Concessionaire shall regulate the User traffic on the Railway Station in accordance with Applicable Laws and subject to the supervision and control of the Authority [or a substitute thereof empowered in this behalf under Applicable Laws].
- 5.26.2 The Concessionaire shall, in consultation with the Authority and representatives of Users, evolve and publicise a system based on Good Industry Practice such that no User or category of Users is discriminated against or unduly favoured, as the case may be, in the use of the Railway Station.
- 5.26.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Railway Station on a common carrier basis providing non- discriminatory services to all persons.

5.27 Key Performance Indicators (KPI)

- 5.27.1. The Concessionaire shall operate and maintain the Railway station as per the KPIs specified in Schedule-O. The Concessionaire shall submit a Maintenance Manual within three months from the Effective date and once in every three years thereafter for execution of scope of work in accordance with Good Industry Practice to meet the KPIs.

5.27.2 ISO Certification:

Extant ISO 14001 certification shall be taken within 6 (six) months from the COD, and further as per schedule of ISO certifying authority. In case of delay beyond 3 (three) months, or non-compliance of ISO certification, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the [0.1% (zero point one per cent)] of Average Daily Station Development Fee.

5.27.3 Redressal of Public Grievances:

The Concessionaire shall integrate public grievance mechanism with the extant system of Ministry of Railways and shall address the complaints received as per the policy laid down by Ministry of Railways.

5.27.4 Target Rating and User Survey:

- a) An independent third-party auditor who shall be appointed by Authority/ Government to undertake independent Survey and Audit, covering complete station area as per the scope, with the exception of disruption due to construction related activities. In addition, the Authority may also undertake inspections, surveys, etc.
- b) The database created through the SCADA/ CCTV footage and/or any other monitoring process shall be shared Live with the Authority and stored for at least 45 days. For post Audit purposes, survey/ inspection reports shall be kept for at least 3 years.

5.27.5 Status Reports for Key Performance Indicator:

- a) The Concessionaire shall furnish quarterly status report towards compliance of all the Key Performance Indicators.
- b) The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the quarter in which the shortfall occurred. Damages due and payable shall be determined at the rate of [1% (one per cent)¹³ of the total revenue from Fees in the respective quarter for every shortfall of 10% (ten per cent)] in any single performance indicator specified; provided, however, that where the shortfall cannot be quantified, the Damages shall be determined at the rate of [2% (two per cent)¹⁴] of the total revenue from Fee for the relevant quarter; provided further that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire. For the avoidance of doubt, the Damages payable hereunder shall be in addition to the Damages and penalties due and payable under Maintenance Requirements.
- c) In case Concessionaire fails to achieve the minimum score as prescribed in the Station Quality Index for any 3 [three] consecutive quarters, it is liable for termination

5.28 Security

- 5.28.1 The Authority acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the Railway Station for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Government and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Railway Station
- 5.28.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Railway Station and shall be responsible for the security arrangements within the Railway Station in order to maintain orderly conduct of its business and the security thereof.
- 5.28.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security within and around the Railway Station. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority's actions or the actions of any organisation authorised by the Authority other than those resulting from wilful or grossly negligent acts or omissions of such organisation.
The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Railway Station or interfering with the exercise of

¹³ [10% (ten percent) during the Construction Period]

¹⁴ [20% (twenty percent) during the Construction Period]

rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Authority in the discharge of their obligations there under.

- 5.28.4 Subject to the rights of the Concessionaire under this Clause 5.28.4, the Authority or any agency duly authorised by it shall be entitled to inspect and search all Trains and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Railway Station.
- 5.28.5 The Authority agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Authority/Government on a best effort basis.
- 5.28.6 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Railway Station are allowed free ingress and egress from the limits of the Railway Station without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority/Government.
- 5.28.7 The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Railway Station is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate.

Article 6

[STATION ESTATE DEVELOPMENT]

6.1 Station Estate Development

6.1.1 The Concessionaire shall undertake Station Estate Development on the airspace [and/or land] as specified in Schedule-A in accordance with the provisions of this Agreement [and Station Estate Lease Deed] and Applicable Laws. [For the Station Estate Development being undertaken through transfer of lease-rights, separate lease deed shall be executed between the Parties in accordance with the provision of this Agreement.]

6.1.2 The development and maintenance of infrastructure such as roads, electric supply, water supply, sewerage and drains forming part of Station Estate Development shall be undertaken or cause to be undertaken by Concessionaire at its cost in accordance with the provisions of this Agreement, [Station Estate Lease Deed,] Applicable Laws and Good Industry Practice.

6.2 Operation & maintenance of Station Estate Development

The Concessionaire shall comply with the provisions of this Agreement, [Station Estate Lease Deed,] Applicable Laws and Good Industry Practice in the operation, maintenance and management of the Station Estate Development and shall make commercial use thereof subject to provisions of this Agreement and Applicable Laws.

6.3 Costs, taxes and revenues

6.3.1 All costs, expenses, taxes, cess, fees, municipal tax and charges relating to Station Estate Development, if any, shall be borne by the Concessionaire. In the event of any default by Concessionaire with respect to such payments, the said payments shall be made by the Authority, in accordance with Applicable Laws and the equivalent amount shall be reimbursed by the Concessionaire to the Authority, along with Damages at the rate of [15%], within a period of [60] days, failing which the equivalent amount shall be deducted by the Authority from the Performance Security.

6.3.2 All revenues accruing from the Station Estate Development shall be appropriated by the Concessionaire in accordance with the provisions of this Agreement, [Station Estate Lease Deed] and Applicable Laws.

6.4 Restrictions on Station Estate Development

6.4.1 The Concessionaire shall procure that the Station Estate Development is in conformity with Applicable Laws and Applicable Permits.

6.4.2 The Concessionaire shall not [sub-lease,] sub-license, assign or in any manner create an Encumbrance on any part of Station Estate Development. except in accordance with the provisions of Clause 2.8.1.

6.5 Provision for Additional Built Up Area

6.5.1 The Built-Up Area, of Station Estate Development shall be governed by provisions of the Agreement [and Station Estate Lease Deed]. The variation/s in the Reference Built Up Area over the Concession Period shall be dealt as in the Agreement [and Station Estate Lease Deed, as applicable].

6.5.2 In case, Concessionaire requests for additional Built Up Area, it shall pay to Authority, on approval, an additional Consideration for variation in Reference BUA.

The amount payable for such additional Built Up area shall be payable as below.

Additional Consideration = $K * \text{BUAF} * \text{CRF} * \text{TF}$.¹⁵ *where,*

K is the pre-defined amount¹⁶

- BUAF is (Additional BUA/Reference BUA)
- CRF is (New Circle Rate/Reference Circle Rate)
- TF is (Term remaining/Reference Term).

6.6 Sub-licensing [/leasing] of Station Estate Development

6.6.1 Subject to the provisions of Clause 2.8.1 and this Clause 6.6.1, the Concessionaire may [sub-lease/] sub-license the Project Assets comprising Station Estate Development such that the period and validity of such sub-lease/sub-license shall not extend beyond the period specified in Clause 6.7.

6.6.2 Notwithstanding anything to the contrary contained in Clause 6.6.1, the Concessionaire shall not [sub-lease,] sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Station Estate Development at any time prior to COD. Provided, however, that the restraint hereunder shall not apply to advertising or to any other Encumbrance created for a period not exceeding 6 (six) months. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement. However, the Concessionaire shall be entitled to market Built Up Area in the Station Estate Development Assets prior to COD, through a provisional letter of allotment in compliance with the requirements set forth in this Agreement [Station Estate Lease Deed] , after the approval of the Station Estate Development Plan from the Authority and obtaining of the approvals in respect thereof from the concerned Government Instrumentality under Applicable Laws. The Authority shall grant approval/comments on the Station Estate Development Plan within 30 days of receipt of request thereof.

6.7 Rights of sub-[leases]/ licenses of Station Estate Development after Termination

The Parties expressly acknowledge and agree that the Concessionaire may, in its discretion, grant sub-[leases]/licenses for Station Estate Development upto the maximum period permissible under Clause 2.2.1., the Parties further agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the [sub-leases]/ sub-

¹⁵ Note: The details shall be available in Schedule B

¹⁶ (K is based on the business plan of the project indicating the amount to be realized from Station Estate)

licenses and the rights of the [sub-leases]/sub-licensees shall continue to subsist as if the [sub-leases]/ sub-licenses were granted by the Authority, and the Authority shall, for the remaining period of each [sub-leases]/ sub-license, be deemed to be the grantor of the [sub-leases]/sub-licence by stepping into such [sub-leases]/sub-license in pursuance of the Covenant referred to in Clause 2.8.4. For the avoidance of doubt and by way of illustration, if the Concession Period is 30 (thirty) years and the Concession Agreement is terminated in the 20th (twentieth) anniversary of the Appointed Date, the tenure of a [sub-leases]/sub-license shall extend upto the earlier of the term specified in such [sub-leases]/ sub-license and the 30th (thirtieth) anniversary of the Appointed Date

6.8 Compliance with Applicable Laws

The Concessionaire shall, in respect of Station Estate Development, at all times conform to the Central, State, local or municipal laws and regulations or by- laws thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like purposes.

Article 8

INDEPENDENT ENGINEER AND SAFETY CONSULTANT

8.1 Appointment of Independent Engineer

- 7.1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated 21, May 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer.
- 7.1.2 The Authority and Concessionaire shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in Clause 7.1.1, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of [3 (three)]¹⁷ years. On expiry or termination of the aforesaid appointment, the Authority shall appoint an Independent Engineer for a further term of [3 (three)] years in accordance with the provisions of Clause 7.1.1, and such procedure shall be repeated after expiry of each appointment.

8.2 Duties and functions of Independent Engineer

- 7.2.1 The Independent Engineer shall discharge its duties and functions as per the provisions of this Agreement. [For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 3.21.1 shall not include Station Estate Development.]
- 7.2.2 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 7.2.3 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

8.3 Remuneration of Independent Engineer

Authority shall endeavour that payments to the Independent Engineer during Development and Construction Period on account of fee and expenses do not exceed [1% (one per cent)] of the Total Project Cost. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority. One-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

¹⁷ This shall be linked to the Construction period of the Station Development

All payments made to the Independent Engineer on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

[Notwithstanding anything to the contrary contained in this Schedule, the Government/Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects.]

8.4 Termination of appointment of Independent Engineer

7.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 7.1.

7.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 7.1.

8.5 Authorised signatories for Independent Engineer

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

8.6 Dispute resolution

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

8.7 Interim arrangement

In the event that there is no Independent Engineer on board, the Authority may, in the interim, designate and authorise any person to discharge the functions of the Independent Engineer, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this

Agreement. Provided however, that nothing contained in this Clause 7.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

8.8 Appointment of Safety Consultant

For carrying out safety audit of the Railway Station under and in accordance with this Schedule-L, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “Safety Consultant”). The Safety Consultant shall employ a team comprising, without limitation, one rail safety expert and one traffic planner to undertake safety audit of the Railway Station. After COD, Independent Engineer shall additionally undertake the role of Safety Consultant.

Article 9

FINANCIAL COVENANTS

9.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority, by way of annual concession fee, a sum of Re. 1 (Rupee one) per annum (the “Concession Fee”).

8.1.1 Payment of Concession Fee

The Concessionaire shall pay to the Authority, the Concession Fee under the provisions of the Clause 8.1 along with the GST as leviable on payment of the Concession Fee under Applicable Law, not later than the 7th (seventh) day of the Appointed Date and its every anniversary thereafter.

9.2 Yearly Reconciliation of Concession Fee

Every year the balancing payment (reflecting netting of amounts which are due and payable as reimbursement, adjustment or otherwise, or as Damages which are not paid, or not recovered from the Performance Security under this Agreement) (the “Balancing Payment”) shall be calculated by the Authority who shall deliver its calculation and statement to the Concessionaire within 30 (thirty) days of the end of each Accounting Year. Each such statement shall have attachments reasonably supporting evidence of all amounts claimed.

9.3 Station Development Fee

8.3.1 Commencing from COD, the Authority shall levy, collect and appropriate the Station Development Fee (SDF) from the passengers in accordance with this Agreement and the Fee Notification set forth in Schedule-M.

8.3.2 Commencing from COD and till the Transfer Date, the Authority shall pay to the Concessionaire the Station Development Fee, but subject to clause 8.3.3.

8.3.3 Rebate to Authority¹⁸

Without prejudice to the provisions of Clauses 8.1 and 8.3.1, the Concessionaire agrees to pay to the Authority, a rebate of% (the “Rebate”) in the Station Development Fee. For avoidance of doubt, the Station Development Fee shall be payable to the Concessionaire after applying the Rebate. By way of illustration, if the Rebate offered by the Concessionaire is 10% and the SDF in 9th year from the COD is Rs 24 Cr, then the payment to be made to the Concessionaire by the Authority shall be Rs 21.60 Cr only.

9.4 Platform Tickets

Commencing from the Appointed Date and till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate the amount of Platform

¹⁸ The Rebate offered by bidder shall be the Bid Parameter

Tickets from the visitors, except the Exempted Persons, to the Railway Station, for use of the Station Building, in accordance with this Agreement and the Fee Notification set forth in Schedule-M.

9.5 Revision of Fee

[The Parties hereto acknowledge and agree that subject to and in accordance with the Fee Notification, the Fee as applicable on COD (the “Base Fee”) shall be increased by 10% (Ten percent) every five years, and such SDF and Platform Ticket shall be rounded off to the next rupee. For the avoidance of doubt, it is agreed that such revision in Fee shall be effective from 1st April of the Accounting Year in which every fifth anniversary of COD falls.]

9.6 Additional charge for evasion of Fee

In the event that any person uses the Railway Station without payment of Fee due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect or cause as collection, as the case may be, from such person the Fee due. Penalty may be imposed by the authorized Railway Officials as per IR rules.

9.7 Payment of Station Development Fee

- 8.7.1 The Authority shall, subject to Clause 8.3.3 pay to the Concessionaire, Station Development Fee (SDF) by depositing in the Escrow Account on a monthly basis, not later than the 7th (seventh) day of the subsequent month.
- 8.7.2 Authority shall be entitled for an early payment incentive on Station Development Fee in case of payment being made upto 3 business days of such following month. The early payment incentive for each such instance to Authority shall be in form of 0.25% discount on the Station Development Fee due to be payable to Concessionaire. Further, in the event of any delay in payment of the Station Development Fee to the Concessionaire, in accordance to Clause 8.7.1, the Authority shall be liable to pay to the Concessionaire beyond [7 days] of the due date for payment, an additional sum calculated at the rate of 0.05% (zero point zero five percent) of the amount due for each day of delay.

9.8 Taxes and duties

It is expressly agreed by the Parties that the SDF and other payments to be made to Concessionaire by the Authority shall be inclusive of all taxes and duties. It is further agreed that the Concessionaire shall pay all taxes and duties in accordance with Applicable Laws. Any payment to be made by the Authority shall be subject to any tax deduction at source, if required to be made by the Authority as per Applicable Laws.

9.9 Other Revenues

- 8.9.1 **Other Business:** On and from the Appointed Date and till the Transfer Date, the Concessionaire shall have the sole and exclusive right to, in accordance with the provisions of Applicable Laws, engage in commercial exploitation for the optimum utilisation of the Project Assets, including assets created for and in respect of such business and Existing

Contracts (the “Other Business”) other than such businesses that fall under the Negative List as per Schedule B. For the avoidance of doubt, it is agreed that all such amounts received as Station Revenue [and amounts received from commercial exploitation of Station Estate Development] undertaken by the Concessionaire in accordance with the provisions of this Agreement shall be deemed to be included in Other Business and shall be appropriated by the Concessionaire.

- 8.9.2 **Parcel Handling Charges:** On and from the COD and till the Transfer Date, the Concessionaire shall provide parcel handling services and have the sole and exclusive right to demand, collect and appropriate the Parcel Handling Charges from Authority in terms of this Agreement against providing parcel handling services.

9.10 Escrow Account

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

- 8.10.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative,.

8.10.3 **Deposits into Escrow Account**

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

- a. all funds constituting the Financial Package;
- b. all Fee, Parcel Handling Charges, Platform Tickets and any other revenues from or in respect of the Railway Station, including the proceeds of any rentals, deposits, capital receipts or insurance claims;
- c. [all revenues from or in respect of the Station Estate Development, including the proceeds of any lease, rentals, deposits, capital receipts or insurance claims;] and
- d. all the payments by the Authority, after deduction of any outstanding Concession Fee:

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

8.10.4 **Withdrawals from Escrow Account during Concession Period**

The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:

- a. all taxes due and payable by the Concessionaire for and in respect of the Railway Station;
- b. Concession Fee due and payable to the Authority;
- c. all payments relating to construction of the Railway Station, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- d. O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- e. O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- f. [all payments relating to construction of the Station Estate Development]
- g. monthly proportionate provision of Debt Service due in an Accounting Year;
- h. all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- i. any reserve requirements set forth in the Financing Agreements; and
- j. balance, if any, in accordance with the instructions of the Concessionaire.

The Concessionaire shall not in any manner modify the order of payment specified in Clause 8.11.4, except with the prior written approval of the Authority.

8.10.5 **Withdrawals from Escrow Account upon Termination**

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Railway Station;
- (b) outstanding Concession Fee;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (d) retention and payments relating to the liability for defects and deficiencies set forth in Clauses 9.27 and 9.28;
- (e) incurred or accrued O&M Expenses;
- (f) outstanding Debt Service ;
- (g) any other payments required to be made under this Agreement; and
- (h) balance, if any, in accordance with the instructions of the Concessionaire: Provided that no appropriations shall be made under Sub-clause (h) of this Clause 8.10.5 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 9.22.

The provisions of this Clause 8.10.5 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in this Clause 8.10.5 have been discharged.

9.11 Insurance

8.11.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account.

8.11.2 Insurance Cover

Without prejudice to the provisions contained in Clause 8.11.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or others who may enter the Railway Station;
- (c) the Concessionaire's general liability arising out of the Concession;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) to (e) above.

8.11.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Clause 8.11.3 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

8.11.4 Remedy for failure to insure

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

8.11.5 **Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Clause 8.11.5 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

8.11.6 **Concessionaire's waiver**

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

9.12 Accounts and Audit

8.12.1 **Audited accounts**

- (i) The Concessionaire shall maintain books of accounts recording all its receipts (including all Fee and other revenues derived/received/collected by it from or on account of the Railway Station [and the Station Estate Development]and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, as required, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be

rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

- (ii) The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- (iii) On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement in the format approved by Authority, duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of Users using the Railway Station and liable for payment of Station Development Fee and Platform Ticket therefor, (b) Fee charged and received and other revenues derived from the Railway Station, and (c) such other information as the Authority may reasonably require.

8.12.2 **Appointment of auditors**

- (i) The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- (ii) The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- (iii) Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

8.12.3 **Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors.

8.12.4 **Dispute resolution**

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

Article 10

FORCE MAJEURE AND TERMINATION

10.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 59.1.1, 9.1.2 and 9.1.3 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

10.1.1 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Railway Station for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 9.1.2;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor.
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

10.1.2 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible;
- (c) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (d) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (e) failure of the Authority to permit the Concessionaire to continue the Construction Works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archaeological finds or for any other reason;
- (f) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (g) any Indirect Political Event that causes a Non-Political Event; or
- (h) any event or circumstances of a nature analogous to any of the foregoing.

10.1.3 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Clause 10.4 and its effect, in financial terms, exceeds the sum specified in Clause 10.2.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation,

no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

10.2 Duty to report Force Majeure Event

9.2.1 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 Clause 9.2.1 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.

9.2.2 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 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

9.2.3 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 9.2.1, and such other information as the other Party may reasonably request the Affected Party to provide.

10.3 Effect of Force Majeure Event on the Concession

9.3.1 Upon the occurrence of any Force Majeure Event prior to Financial Close, the period set forth in Clause 2.3 for fulfilment of Conditions Precedent shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) At any time during the Concession, the Concession period shall be extended for a duration of subsistence of Force Majeure period if such Force Majeure Event subsists for a period of 90 (ninety) days or more within a continuous period of 365 (three hundred and sixty five) days; and
- (b) Before COD, the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists;

10.4 Allocation of costs arising out of Force Majeure

9.4.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

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

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

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

9.4.3 Save and except as expressly provided in this Clause 9.4.3, 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.

10.5 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 270 (Two hundred and seventy) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Clause 9.5, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

10.6 Termination Payment for Force Majeure Event

- 9.6.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire an amount equal to 70% (seventy percent) of the (Station Termination Payment and Additional Termination Payment), less Insurance Cover admitted and paid.
- 9.6.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 100% (one hundred percent) of the (Station Termination Payment and Additional Termination Payment), less Insurance Cover admitted and paid, provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.
- 9.6.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 9.18.2 as if it were a Authority Default.

10.7 Dispute resolution

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

10.8 Excuse from performance of obligations

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

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

10.9 Mitigation of costs and damage

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

10.10 Concessionaire Default

The defaults referred to Concessionaire herein shall include the following:

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 3.1.1 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 3.1.1, the Concessionaire fails to meet any Condition Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred and twenty) days;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for extended period as approved by Independent Engineer;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Railway Station without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 4.1.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 4.19.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) Upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 2.9;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement;
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority; or
- (y) Failure to meet the minimum score in the Station Quality Index as per the provisions of this Agreement
- (z) [the Concessionaire commits a default in complying with any provision of the Station Estate Lease Deed.]

10.11 Suspension upon Concessionaire Default

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

10.12 Authority to act on behalf of Concessionaire

- 9.12.1 During the period of Suspension, Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 8.10.4.
- 9.12.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire, and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby leases, licences and sub-leases, sub-licences respectively, the Authority or any other person authorised by it under Clause 9.11 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Railway Station and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

10.13 Revocation of Suspension

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

10.14 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 9.11, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

10.15 Termination

- 9.15.1 At any time during the period of Suspension under the Clause 9.11, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 9.14, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Clause 9.15 as if it is a Concessionaire Default under Clause 9.16.
- 9.15.2 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 9.11, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

10.16 Termination for Concessionaire Default

- 9.16.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified as outlined under Concessionaire Default 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 unless the default has occurred as a result of any breach of this Agreement by the Authority or due to Force Majeure.
- 9.16.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 9.16.3.
- 9.16.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 9.16.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from

the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

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

10.17 Termination for Authority Default

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) the Authority fails to provide the Right of Way, within a period of 180 (one hundred and eighty) days from the Appointed Date, required for construction of the Railway Station on at least [90% (ninety per cent)] of the total area of the Railway Station;¹⁹ or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

9.17.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the

¹⁹ It shall exclude the RoW to the existing Government Buildings as per the Handover Protocol

Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

10.18 Termination Payment

- 9.18.1 Upon Termination on account of Concessionaire Default during the Construction Period, Authority shall pay to the Concessionaire by way of Termination Payment the amount of expenditure incurred in construction of Railway Station which is in excess of 50% of Total Project Cost, provided that in no case, such Termination Payment amount payable shall be more than 40% of Total Project Cost. The Parties also agree that for determining the Termination Payment under this Clause 9.18.1, the expenditure comprising the latest Project Milestone shall also be reckoned.
- 9.18.2 Upon Termination on account of a Concessionaire Default after the Construction Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) 70% (seventy percent) of the amount representing the Station Termination Payment ;
and
 - (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:
- 9.18.3 Upon Termination on account of a Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) 120% (one hundred and twenty percent) of the amount representing the Station Termination Payment.; and
 - (b) 120% (one hundred and twenty per cent) of the amount representing the Additional Termination Payment.
- 9.18.4 Termination Payment shall become due and payable to the Concessionaire within 90 (ninety) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 180 (one hundred eighty) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 9.18.5 The Concessionaire expressly agrees that Termination Payment under this Article 40 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the

Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

10.19 Certain limitations on Termination Payment

9.19.1. For the avoidance of doubt, no Termination Payment are liable to be paid by the Authority for Change of Scope and Change in Law.

9.19.2 Additional Termination Payment due and payable in respect of Specified Assets, not being assets forming part of Station Estate Development , which are constructed, acquired or installed after the 3rd (third) anniversary of COD with prior approval of Authority shall mean an amount equal to the lower of the amounts determined pursuant to sub-clauses (a), (b) and (c) below.

- (a) The sum of the following amounts as on the Transfer Date as certified by the Independent Engineer:
 - (i) Adjusted Depreciated Value thereof;
 - (ii) Actual costs incurred by the Concessionaire in the works-in-progress handed over to the Authority by the Concessionaire as on the Transfer Date.
- (b) Sum of the values of the assets and/ or costs incurred, as the case may be, set out in sub-clause (a) above, as determined by an Approved Valuer, who shall be selected and appointed by the Authority within 15 (fifteen) days of the Transfer Date, and who shall submit its determination within 30 (thirty) days of appointment thereto, and
- (c) [10% (ten per cent)] of the sum of Total Project Cost;

9.19.3 Additional Termination Payment due and payable in respect of Station Estate Development forming part of Specified Assets shall mean an amount equal to the lower of the amounts determined pursuant to sub-clauses (a), (b) and (c) below.

- (a) The sum of the following amounts as on the Transfer Date as certified by the Independent Engineer:
 - (i) Adjusted Depreciated Value thereof;
 - (ii) Actual costs incurred by the Concessionaire in the works-in-progress handed over to the Authority by the Concessionaire as on the Transfer Date.
- (b) Sum of the values of the assets and/ or costs incurred, as the case may be, set out in sub-clause (a) above, as determined by an Approved Valuer, who shall be selected and appointed by the Authority within 15 (fifteen) days of the Transfer Date, and who shall submit its determination within 30 (thirty) days of appointment thereto, and
- (c) [30% (thirty per cent)] of the sum of Total Project Cost;

10.20 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Railway Station [and the Station Estate Development] 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 9.22; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

10.21 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 9.18, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

10.22 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Railway Station [and the Station Estate Development];, free and clear of all

Encumbrances, save and except to the extent set forth in the Substitution Agreement;

- (c) cure all Project Assets of all defects and deficiencies so that the Railway Station[and the Station Estate Development]; 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, 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 documents delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Railway Station [and the Station Estate Development]. However, adequate numbers of licenses for such Intellectual Property Rights shall be made available at Concessionaire costs and expenses to Authority for a period of [3 (months)] after Transfer Date to ensure the continued construction and/or O&M, as the case may be ;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project Assets, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Railway Station [and Station Estate Development];, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

10.23 Inspection and cure

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

verify, after giving due notice to the Concessionaire specifying the time, date and place of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Clause 10.2 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Clause 9.23.

10.24 Cooperation and assistance on transfer of Project

- 9.24.1 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.
- 9.24.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 9.24.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any Encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 9.22.1 and is reasonably required in connection with operation of the Project.

10.25 Vesting Certificate

The divestment of all rights, title and interest in the Railway Station [and Station Estate Development] shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth (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 Rail way Station, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Railway Station [and Station Estate Development] on the footing that all Divestment Requirements have been complied with by the Concessionaire.

10.26 Divestment costs etc.

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 Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.

10.27 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Rail way Station for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Railway Station [and Station Estate Development] during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Railway Station [and Station Estate Development] conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 9.28 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Clause 9.27 shall not apply if Termination occurs prior to COD.

10.28 Retention in Escrow Account

- 9.28.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 9.28.3, a sum equal to 5% (five per cent) of the total Fee received and/or collected as per the provisions of this Agreement for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 9.27.
- 9.28.2 Without prejudice to the provisions of Clause 9.28.1, the Independent Engineer shall carry out an inspection of the Railway Station at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Railway Station is such that a sum larger than the amount stipulated in Clause 9.28.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account for the period specified by it.
- 9.28.3 The Concessionaire may, for the performance of its obligations under this Clause 9.28.3, provide to the Authority a guarantee from a Bank for a sum equivalent to the

amount determined under Clause 9.28.1 or 9.28.2, as the case may be, and for the period specified therein, (the “**Performance Guarantee**”), to be modified, *mutatis mutandis*, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire’s risk and cost in accordance with the provisions of this Article 42. Upon furnishing of a Performance Guarantee under this Clause 9.28.3, the retention of funds in the Escrow Account in terms of Clause 9.28.1 or 9.28.2, as the case may be, shall be dispensed with.

Article 11

OTHER PROVISIONS

11.1 Assignments and Charges

11.1.1 Restrictions on assignment and charges

- (a) Subject to Clauses 10.1.2 and 10.1.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- (b) Subject to the provisions of Clause 10.1.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

11.1.2 Permitted assignment and charges

The restraints set forth in Clause 10.1.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Railway Station [and the Station Estate Development];
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Railway Station [and the Station Estate Development], and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/ or for working capital arrangements for the Railway Station. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or Encumbrances required by any Applicable Law.

11.1.3 Substitution Agreement

- (a) The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders.
- (b) Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

11.2 Change in Law

11.2.1 Increase or Reduction in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden or benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. [5 crore (Rupees five crore)²⁰] and 0.5% (zero point five per cent) of the Fee received and/or collected as per the provisions of this Agreement in any Accounting Year, the Concessionaire may so notify the Authority or vice versa, as the case may be, and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in increased cost, reduction in return or other financial burden as aforesaid or in decreased costs, increase in return or other financial gains as aforesaid, as the case may be. Upon notice, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

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

²⁰ This amount may, in the discretion of the Government, be suitably increased, but in no case exceeding an amount of Rs. 1 cr. for every Rs. 500 cr. of Total Project Cost..

10.2.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

11.2.2 Protection of NPV

Pursuant to the provisions of Clauses 10.2.1 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the debt under its Financing Agreements.

11.2.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Clause 10.2.3 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

11.2.4 No claim in the event of recovery from Users

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

11.3 Liability and Indemnity

11.3.1 General indemnity

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

any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.

- (b) The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (a) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (b) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

11.3.2 Indemnity by the Concessionaire

- (a) Without limiting the generality of Clause 10.3.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
 - (i) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
 - (ii) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
 - (iii) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.
- (b) Without limiting the generality of the provisions of this Clause 10.3.2, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the 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 Railway

Station, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non- infringing work or part or process, or modify the same so that it becomes non infringing.

11.3.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Clause 10.3.3 (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.

11.3.4 Defence of claims

- (a) The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Clause 10.3.4, 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.
- (b) If the Indemnifying Party has exercised its rights under Clause 10.3.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit

or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

- (c) If the Indemnifying Party exercises its rights under Clause 10.3.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (i) the employment of counsel by such party has been authorised in writing by the Indemnifying Party;
 - (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action;
 - (iii) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (iv) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - a. that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - b. that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (ii), (iii) or (iv) of this Clause 10.3.4 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

11.3.5 No consequential claims

Notwithstanding anything to the contrary contained in this Clause 10.3, 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.

11.3.6 Survival on Termination

The provisions of this Clause 10.3 shall survive Termination.

11.4 Access rights of the Authority and others

10.4.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Authority, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to

inspect the Railway Station and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

11.5 Obligation with respect to Taxes and duties

The Concessionaire shall, with effect from the Appointed Date, pay all outgoings, cess, Taxes (including municipal taxes), levies, import duties, fees (including any license fees) rates and other user charges (including those applicable for existing utility connections and any other dues, assessments or outgoings 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 Instrumentality. The Concessionaire shall, with effect from the Appointed Date, also pay all outgoings, cess, Taxes (including municipal taxes), rates and other user charges whatsoever and all increases thereto, in respect of the Project, in each case till such time as the same are not handed over to Authority or its nominee in accordance with the terms hereof.

Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation and execution of the Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to the (a) Agreement and/or cancellation / termination of the Agreement, (b) lease deed(s) and/or sub-lease deed(s) to be executed in favour of the Concessionaire / its nominee, (c) surrender and/or cancellation of such lease deed(s) and/or sub-lease deed(s) etc., shall be borne by the Concessionaire. The Parties expressly agree that it shall be the responsibility of the Concessionaire to comply with the requirements in relation to the registration of the Agreement with any relevant Government Instrumentality.

11.6 Restriction on sub-letting

The Concessionaire shall not [sub-lease or] sub-license or sub-let the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Railway Station.

11.7 Dispute resolution

- 10.7.1 In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**"), either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.
- 10.7.2 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.

10.7.3 Dispute Resolution Board

Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either party may require such Dispute to be referred to the Dispute Resolution Board (“DRB”) . The decision(s) of the Dispute Resolution Board shall be binding on both parties who shall promptly give effect to unless and unless the same is revised/modified, as hereinafter provided, in a Conciliation/ Arbitral Tribunal-

10.7.4 Conciliation

If either party is dissatisfied with any decision of DRB, and/or if the DRB is unable to resolve the Dispute, either Party may require such Dispute to be referred to General Manager, *** Railway/ Vice Chairman (RLDA)/ MD&CEO (IRSDC), as the case may be, and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 15 (fifteen) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 15 (fifteen) day period or the Dispute is not amicably settled within 30 (thirty) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 10.7.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 10.8.

11.8 Arbitration

- 10.8.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 10.7.1, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 10.8.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi or Mumbai Centre For International Arbitration (MCIA) (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 and any amendment thereof.
- 10.8.2 There shall be an arbitral tribunal comprising three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 10.8.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Clause 10.8 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

11.9 Adjudication by a tribunal

In the event of constitution of a statutory tribunal or other forum with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 10.7.2, be adjudicated upon by such tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

11.10 Governing law and jurisdiction

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

11.11 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.12 Depreciation

For the purposes of depreciation under Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project Assets shall be deemed to be

acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under Applicable Laws.

11.13 Delayed payments

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

10.13.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

11.14 Waiver

10.14.1 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.

10.14.2 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.

11.15 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Railway Station 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, Applicable Laws and Applicable Permits; and

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

11.16 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.

11.17 Survival

10.17.1 Termination shall:

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

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

11.18 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.

11.19 Severability

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

provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

11.20 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

11.21 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.

11.21.1 Successors and assigns

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

11.21.2 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside the capital of the State may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;

{Attention:
Designation:
Address:
Fax No:
Email:}

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided

that if the Concessionaire does not have an office in in the capital of the State it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

{Name;
Designation;
Address:
Fax No:
Email:} and

- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

11.21.3 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.

11.22 Counterparts

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

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

SIGNED, SEALED AND DELIVERED

[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]²¹:

1. For and on behalf of the **Authority**

Signature:

Name:

Designation:

2. For and on behalf of the **Concessionaire**

Signature:

Name:

Designation:

3. For and on behalf of the PIA

Signature:

Name:

Designation:

Witness:

1.

Witness:

2.

21 To be affixed in accordance with the Article of Association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULE

SCHEDULE – A

(See Clause 3.2)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Railway Station shall include the land, buildings, structures and road work.
- 1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 3.4.1 of the Agreement.

2 Master Plan and permissible land use

- 2.1 The Master Plan of the Site specifying the permissible uses of the land comprised therein and the terms thereof.
- 2.2 The use of land comprising the Site shall at all times conform to the provisions of this Agreement and Applicable Laws.

3 [Station Estate Development

The airspace and/or land earmarked for Station Estate Development to be described, and such land shall form part of the Site.

[**Note 1:** Paragraph 3 may be omitted if Station Estate Development is not contemplated.]

[**Note 2:** The Annexures may comprise of suitable plans, drawings, description in words etc to describe the extent of Site/ Master Plan / Station Estate and other relevant details]

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE RAILWAY STATION [AND STATION ESTATE DEVELOPMENT]

1 Development of the Railway Station

Development of the Railway Station shall include construction of the Railway Station as described in this Schedule-B and in Schedule-C.

2 Railway Station

2.1 Railway Station shall include:

- (a) Station Building as described in Annex-B.1 and Annex-C.1;
- (b) Parking Facilities as described in Annex-B.2 and Annex-C.2; and
- (c) Parcel Facilities as described in Annex-B.3 and Annex-C.3.

2.2 Construction of Railway Station shall be completed by the Concessionaire in conformity with the Specifications and Standards set forth in Annex-D.1.

[3 Station Estate Development

3.1 Station Estate Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-B.4.

[**Note 1:** Paragraph 2 may be omitted if Station Estate Development is not contemplated.]

[**Note 2:** Through suitable drawings and description in words, the components comprising the Railway Station Development, Parking Facilities, Parcel Facilities and Station Estate Development requirements shall be specified briefly but precisely in the Annexures.]

SCHEDULE – C

(See Clauses 2.1 and 5.20)

PROJECT FACILITIES

1 Project Facilities

The Concessionaire shall construct the Project Facilities in accordance with the provisions of this Agreement.

2 Project Facilities for Station Building

Project Facilities forming part of the Station Building and to be completed on or before COD.

The Project Facilities shall include:

- (a) Ticketing counters/booths;
- (b) ticket vending machines;
- (c) pedestrian facilities;
- (d) cloak rooms;
- (e) waiting rooms;
- (f) toilets;
- (g) tree plantation;
- (h) facilities for the physically challenged;
- (i) lifts and escalators;
- (j) public address system;
- (k) public information systems;
- (l) refreshment facilities;
- (m) public access telephones;
- (n) sign systems and automation;
- (o) facilities for tour operators and travel agents;
- (p) facilities for hiring of taxies and transportation;
- (q) banks and foreign exchange facilities;
- (r) landscaping; and
- (s) others (to be specified)

2 Description of Project Facilities

Each of the Project Facilities is briefly described below: [To be described briefly.]

3 Project Facilities for Parking Facilities

Project Facilities forming part of the Parking Facilities and to be completed on or before the Project Completion Date . The Project Facilities shall include:

- (a)
- (b)
- (c)

4 Project Facilities for Parcel Facilities

Project Facilities forming part of the Parcel Facilities and to be completed on or before the COD. The Project Facilities shall include:

- (a)
- (b)
- (c)

SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Railway Station

The Concessionaire shall comply with the Specifications and Standards set forth in Annex-D.1 for construction of the Railway Station.

2 Station Estate Development

Station Estate Development shall be undertaken in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India, UK or USA, as the case may be.

[**Note 1:** The Authority shall prepare a “**Manual of Specifications and Standards for the *** Railway Station**”. Only the basic/fundamental requirements of design and construction shall be laid down in the Manual, and greater emphasis shall be placed on prescribing the output specifications that have a direct bearing on the level and quality of service for Users. The Manual shall be published and applied to the Railway Station by reference hereunder. This would remove the element of uncertainty in project design and help in laying down cost-effective specifications and standards across the country.]

[**Note 2:** Paragraph 2 may be omitted if Station Estate Development is not contemplated.]

Specifications and Standards for the Railway Station

1 Manual of Specifications and Standards to apply

[Subject to the provisions of Paragraph 2 of this Annex-D.1,] the Railway Station shall conform to the Manual of Specifications and Standards for the *** Railway Station published by the Authority .

2 [Deviations from the Manual

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

[Specify the deviations, if any]

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

[**Note 2:** See Note 1 below Schedule-D.]

[**Note 3:** Paragraph 2 and the words enclosed in the parenthesis in Paragraph 1 may be omitted if there are no deviations from the Manual.]

SCHEDULE – E

(See Clause 2.3.2)

EXISTING CONTRACTS[§]

[**Note:** Provide a list, with brief particulars, of all contracts relating to Project Assets, entered into between the Authority and third parties, which are subsisting on the date of this Agreement. Contracts relating to works in progress shall not be included herein.]

[§] All existing Contracts shall have been made available by the Authority/Government for inspection by the Concessionaire prior to bidding for the Project.

SCHEDULE – F

(See Clause 2.3.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 2.3.3 of the Agreement:

Part-I

(a) Permission of the State Government for extraction of boulders from quarry;

Part-II

- (a) Permission of the Pollution Control Board for installation of crushers; (b) License for use of explosives;
 - (c) Permission of the State Government for drawing water from river/reservoir;
 - (d) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
 - (e) Clearance of the Pollution Control Board for setting up Batching Plant;
 - (f) Clearance of the Pollution Control Board for Asphalt Plant;
 - (g) Clearance of the Pollution Control board for installation of diesel generator sets;
 - (h) Fire safety clearance from fire authorities;
 - [(i) Permission of the State Government for cutting of trees;] and
 - (j) Any other permits or clearances required under Applicable Laws.
- 1.2 Unless otherwise specified in this Agreement, Applicable Permits, if any, relating to environmental protection and conservation of the Railway Station shall have been procured by the Authority as a Condition Precedent.

SCHEDULE – G

(See Clause 3.11)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “Project Completion Schedule”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance alongwith necessary particulars thereof. [For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Station Estate development.]

2 Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [180th (one hundred and eightieth)] day from the Appointed Date (the “Project Milestone-I”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Railway Station and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [365th (three hundred and sixty fifth)] day from the Appointed Date (the “Project Milestone-II”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have expended not less than 15% (fifteen per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

4 Project Milestone-III

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

- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package and conveyed to the Independent Engineer, the nature and extent of physical progress comprising such expenditure so as to enable the Independent Engineer to determine that the physical progress is reasonably commensurate with the expenditure incurred. Provided, however, that at least one-half of the expenditure referred to hereinabove shall have been incurred on physical works which shall not include advances of any kind to any person or expenditure of any kind on plant and machinery.

5 Project Milestone-IV

- 5.1 Project Milestone-IV shall occur on the date falling on the [730th (Seven Hundred Thirtieth)] day from the Appointed Date (the “Project Milestone-IV”).
- 5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have expended not less than 50% (fifty per cent) of the Total Project Cost set forth in the Financial Package.

6 Project Milestone-V

- 6.1 Project Milestone-V shall occur on the date falling on the [920th (Nine Hundred Twentieth)] day from the Appointed Date (the “Project Milestone-V”).
- 6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have expended not less than 75% (seventy five per cent)] of the Total Project Cost, set forth in the Financial Package.

7 Scheduled Completion Date

- 7.1 The Scheduled Completion Date shall be the [1,095th (one thousand and ninety fifth)] day from the Appointed Date.
- 7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Railway Station [except the Station Estate Development] in accordance with this Agreement.

8 Extension of period

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

SCHEDULE – H

(See Clause 3.13)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 3.13 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annexure of this Schedule-H.

2 Additional drawings

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

SCHEDULE – I

(See Clause 3.12)

ARCHITECTURAL DESIGN

[**Note:** Specify the architectural parameters, controls, building profiles, facades, dimensions, designs and building parameters briefly but precisely.]

SCHEDULE – J

(See Clause 4.8.2)

GOVERNMENT BUILDINGS

[**Note:** Specify the Government Buildings (with necessary details) that the Concessionaire is required to construct under and in accordance with Clause 4.8.]

SCHEDULE – K

(See Clause 4.13)

TESTS

1 Schedule for Tests

- 1.1 Concessionaire shall, no later than 30 (thirty) days prior to the likely completion of Railway Station, notify the Independent Engineer and the Authority of its intent to subject the Railway Station to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Railway Station.
- 1.2 Concessionaire shall notify the Independent Engineer of its readiness to subject the Railway Station to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 15 and this Schedule-K.

2 Tests

- 2.1 In pursuance of the provisions of Clause 4.13 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2

3 Agency for conducting Tests

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

4 Tests for Safety Certification

Tests for determining the conformity of the Railway Station with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5 Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 15.

6 Tests during construction

Without prejudice to the provisions of this Schedule-K, tests during construction shall be conducted in accordance with the provisions of Clause 4.13.1.

SCHEDULE – L

(See Clause 5.15)

SAFETY REQUIREMENTS

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Railway Station, irrespective of the person(s) at fault.
- 1.2 Users of the Railway Station include staff of the Concessionaire and its contractors working on the Railway Station.
- 1.3 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.
- 1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule - L.

2 Obligations of the Concessionaire

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

- (a) Applicable Laws and Applicable Permits;
- (b) Safety, Health & Environment Manual (SHE Manual), followed/issued by the Authority;
- (c) provisions of this Agreement;
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3 Costs and expenses

Costs and expenses (other than for Independent Engineer whose remuneration shall continue to be shared by Concessionaire and Authority as per the provisions of Independent Engineer) incurred in connection with the Safety Requirements including the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met by the Concessionaire.

SCHEDULE – M

(See Clause 8.2.1)

FEE NOTIFICATION & PARCEL HANDLING CHARGES

[**Note:** The Fee Notification/Rules shall be included in the Draft Concession Agreement to be provided to the bidders before inviting bids. The Notification/Rules are of critical importance to the Concessionaire and lenders as they would determine the revenue streams for the Railway Station. It is also of equal concern to the Users and must, therefore, be drafted with utmost precision and care.

The following provisions (1, 2, and 3) shall be included in the Fee Notification:

1. Station Development Fee

- a. The Notification shall specify the Station Development Fee payable to Authority.
- b. Fee exemption for Exempted Persons shall be specified in the Notification.
- c. The Notification shall specify that it would be valid and operative for the entire Concession Period;
- d. Imposition of fine under IR rules shall be by the authorized Railway Officials.

2. Entrance Fee for visitors

- a) The Notification shall specify the additional Fee applicable from COD and forming part of Platform Tickets payable for entry of visitors in the Station Building.
- b) Fee exemption for Exempted Persons shall be specified in the Notification.
- c) The Notification shall specify that it would be valid and operative for the entire Concession Period;
- d) Imposition of fine.

3. Exempted Persons

- a. Exempted Persons shall be entitled to free Parking Facilities in the reserved Parking Facilities as specified in Schedule-A
- b. Exempted Persons shall be entitled to enter the Station Building without payment of Fee.

4. Parcel Handling Charges:

- a. Parcel Handling Charges for Parcel Facilities shall be payable to Concessionaire by Authority in accordance with the provisions under this Agreement. The fee chargeable to Authority will be per kg [.....] INR. The charges will be raised by the Concessionaire every month along with relevant supporting documents and Authority shall be obliged to pay such charges within 30 (thirty) days thereof.
- b. The Concessionaire may provide value added services associated with parcel handling/booking near the Parcel Facility. Concessionaire shall duly display such charges within the such facility.

- c. The Parcel Handling Charges shall be escalated after 5 years.

The Fee Notification and Parcel Handling Charges shall constitute Schedule-M of the Agreement.

SCHEDULE N**Block Works**

S.No.	Activities	Line	Duration of Block Permitted		Number of Blocks		Cost for Block Hours over and above hours permitted under Column (4) and (5) (Rs. / per hour/minute)	Liquidated Damages for block works without permission (Rs. / hour / minutes)	Escalated Liquidated Damages for not completing the work within permitted Block Work (Rs. / hour / minutes)
			Traffic	Powe	Traffic	Powe			
(1)	(2)	(3)	(4)		(5)		(6)	(7)	(8)
	Total								

SCHEDULE O

KEY PERFORMANCE INDICATORS (KPI)

The Concessionaire shall at all times ensure that the services provided at the Railway Station conform to the Key Performance Indicators specified in this Schedule.

(Note: Items in [...] shall be populated as per project specifics.)

SN	ITEM	OBJECTIVES	Unit & frequency of Measurement	KPI
1	Cleanliness	All station areas should be clean and well maintained as per good industry practices	Ratings during cleanliness surveys; Extant schedule/ frequency of certifying agency; Weekly Inspections	Achieve a score of 85% or above in the Survey as per MOR/ Authority issued guidelines for 'Cleanliness Assessment of Stations'; and; Achieve a satisfactory cleanliness rating for 90% of all inspections
2	Vertical Circulation Elements (VCEs)	VCEs should be operational and well maintained for usage by the public at all times.	Percentage of availability time; Monthly	Escalators, elevators & travelators should be available 98% of the time.
3	Lighting	All station areas should be well-lit for convenience and safety of all passengers at all times.	Percentage of availability time as per O&M Standards; Monthly	Lighting levels shall be maintained as per O&M Standards for 98% of the time.
4	Public Information System (PIS) - active	Dynamic Signage, media, electronic options, etc. for sharing of passenger information should be operational with Live information (as applicable) at all times	Percentage Of availability time as per O&M Standards; Monthly	System to be functional as per Code for 98% of the time.

4 (a)		Audibility of Public Address System (PAS)	Percentage availability time as per O&M Standards; Monthly	System to be functional as per Code for 98% of the time.
5	Public Information System (PIS) - passive	Wayfinding and Signage should be placed at all conspicuous places for convenience of passengers, at all times.	Maintenance as per O&M Standards; Monthly	Wayfinding & Signage shall Standards for 99% of the time.
6	Universal Access	All passengers including differently abled, senior citizens, patients, etc. shall have easy access to the platforms and other passenger amenities	Maintenance as per O&M Standards; Quarterly	100% compliance
7	Availability of Drinking Water	Potable drinking water should be available for Passengers at all times	Availability of potable water as per extant Railway Guidelines; Monthly	100% compliance
8	Asset Maintenance	All the station assets including building, platforms, COPs, horticulture, other equipment, etc. shall be maintained as per good industry practice.	Promptness of addressal and completion of repair and maintenance works; Monthly	- 95% of high priority repair works should be addressed within 4 hours - 95% of others should be addressed within 24 hours
		DFMDs & X Ray baggage scanning machine as per GIP	Availability and Operational time; Monthly	
9	Platform Ticketing	Platform should be made available to customers at all times	Queue length or time taken for dispensing; Weekly	Queue length shall not exceed 10 persons for more than 95% of the time (with exception during heavy rush/mela surge)
10	Passenger Amenities	Availability of amenities for Passenger Convenience & Satisfaction	% availability of amenities; reviewed; Monthly	LOS as per MSSR shall be met 95% of the time (with exception during heavy rush/ mela surge)

11	Complaint Redressal	To ensure Customer Satisfaction	Percentage of complaints responded within specified time; Monthly	100% of complaints responded as per response time defined in Rail Madad.
12	Ambient conditions in the Station Building	Ambient Conditions of the station building has to be maintained as per standards to which the building is designed for.	Temperature; Quarterly	Non AC Areas: Temperature in common areas within the Station Building during operational hours is maintained at a comfortable level with respect to outside temperature as per the Good Industry Practices.
		Air conditioned Areas	Temperature and Humidity; Monthly (between April to September)	95% compliance as per NBC.
13	Safety & Security Systems	Should be functional at all times as per design	Percentage availability time as per O&M Standards; Monthly	System to be functional as per Code for 95% of the time.
14	Ingress-Egress from Station	Seamless access/ egress and smooth movement from drop-off/ pick-up facilities to be ensured at all times.	Time between Entry and Exit from Station premises (dwell time) shall not exceed < > minutes; Monitored weekly.	Dwell time not to be exceeded 98% of the time.
15	Parcel Facilities	Should be functional all times for parcel operations	Percentage of availability time; Monthly Parcel found at other than the designated area on Platforms/Station Building; Weekly	Achieve a score of 85% or above in the Survey as per MOR/ Authority issued guidelines for 'Cleanliness Assessment of Stations'; and; Achieve a satisfactory cleanliness rating for 90% of all inspections

**Annexure-Q.1:
Standards for Operation and Maintenance of Railway Stations:**

Third Party Audits shall undertake independent surveys or inspection by Authority, to assess the operational KPIs as per the O&M Standards as specified:

1. Cleanliness Rating shall be as per “Cleanliness Assessment of Stations” rating system for Railway stations
2. VCEs: monitoring shall be done through SCADA and/or appropriate IT system & related hardware to be enabled as per GIP.
3. Lighting: level shall be checked during Audits. Operation of fixtures can be linked to tools such as SCADA and/or appropriate IT system & related hardware to be enabled as per GIP.
 - a. Lux levels to be measured at 1.2 m from floor level. The following illumination criteria shall be followed:

Area	Average Normal (Lux)	Minimum Emergency (Lux)*
Concourse Public area	200-250	50
Security Room, Lift Lobby, Link Bridge/ FOB, Corridor/Passageway, Fire Escape staircase, Paid Lobby Area, Unpaid Lobby Area	200-300	50
Platform (General)	200	50
Platform (Edge)	250	50
Toilets	100-150	25-50
Parking (where applicable)	100-200	25-50

*Emergency switchover shall be automated and immediate.

4. Public Information System (Active):
 - a. Electronic Signage operations shall be monitored through SCADA and/or appropriate IT system & related hardware to be enabled as per GIP.
 - b. PAS System: The system shall be capable of providing continuous program sound pressure level mentioned as below

Area	Sound Level	Remarks
Concourse	90dba +/-5dB	Considering the same Signal to noise of 15dB, Speech Transfer Index (STI) Should be atleast 0.7 with atleast 95% of public movement space.
Ticketing counters	75dba +/-5dB	
Platforms- 95dba	95dba +/-3dB	Considering noise level at 80db max with Signal to noise ratio of 15db at least, STI Should be atleast 0.7 with atleast 95% of public movement space.

- c. Acoustic Properties shall be maintained as per requirement.
5. Public Information System (Passive): survey as per Wayfinding and Signage policy of Railways
 6. Universal Accessibility: survey as per CPWD Manual/ Railway Manual
 7. Availability of Drinking Water: survey as per Railway Guidelines.
 8. Asset Maintenance shall be completed as per good industry practice.
 9. Platform ticketing: as per CCTV footage or survey/ inspection/ Complaints;
 10. Passenger Amenities: as per survey/ inspection.
 11. Complaint Redressal: as per Rail Madad portal.
 12. Ambient conditions in the Station Building: as per survey/ inspection or any automated means.