



Government of Andhra Pradesh

Concession Agreement

for

Hyderabad Metro Rail (MRTS) Project

between

The Government of Andhra Pradesh

and

M/s. L&T Hyderabad Metro Rail Private Limited

(The “Concessionaire”)

September 4, 2010

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Part I

Preliminary

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the 4th day of September, 2010.

BETWEEN

- 1 **THE GOVERNOR OF ANDHRA PRADESH** represented by Principal Secretary to Government, Municipal Administration & Urban Development Department, Government of Andhra Pradesh, Secretariat, Hyderabad-500022, A.P (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

- 2 L&T Hyderabad Metro Rail Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1-Q4-A1, Cyber Towers, Hitec City, Madhapur, Hyderabad-81, Andhra Pradesh, (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 Government had resolved to provide a rail system for 71.16 km on elevated structures on Miyapur to L.B.Nagar; Jubilee Bus Station to Falaknuma; and Nagole to Shilparamam corridors in Hyderabad on design, build, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into under and in accordance with section 5 of The Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act 2008.
- (B) The Government had accordingly invited proposals by its Request for Qualification No. 155/MD/HMR/2009 dated July 24, 2009 (the “**Request for Qualification**” or “**RFQ**”) for short listing of bidders for construction, operation and maintenance of the above referred rail system on DBFOT basis and had shortlisted certain bidders including, inter alia, the selected bidder being Larsen & Toubro Limited (“**Selected Bidder**”).
- (C) The Government 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.

- (D) After evaluation of the bids received, the Government had accepted the bid of the Selected Bidder and issued its Letter of Award No. 13299/H1/2010 dated August 6, 2010 (hereinafter called the “**LOA**”) to the Selected Bidder requiring, inter alia, the execution of this Concession Agreement within 45 (forty five) days of the date of issue thereof.
- (E) The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Government to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (F) By its letter no. L&T-HMRPL/LEGAL/2010/01 dated 02-09-2010, the Concessionaire has also joined in the said request of the Selected Bidder to the Government to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder 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 for the purposes hereof.
- (G) The Government has agreed to the said request of the Selected Bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Andhra Pradesh, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;

- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “hour” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in Hyderabad are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business

including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;
- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes, the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, clauses and schedules

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
 - (b) all other agreements and documents forming part hereof or referred to herein;
i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.

Part II
The Concession

ARTICLE 2

SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) construction and procurement of the Rail System and Real Estate Development 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) operation and maintenance of the Rail System in accordance with the provisions of this Agreement; and
- (c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Government hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of 35 (thirty five) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that in the event the Concessionaire shall have discharged its obligations without any material breach thereof for a period of 32 (thirty - two) years from the Appointed Date, it may by notice to be given no later than the 33rd (thirty third) anniversary of the Appointed Date, seek extension of the Concession Period, and in such an event, it shall be entitled to an additional Concession Period of 25 (twenty five) years on the terms and conditions set out herein. For the avoidance of doubt, material breach shall for the purposes hereof mean Suspension and/or cumulative levy of Damages exceeding a sum equivalent to Performance Security.

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

- (a) Right of Way, access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) finance and construct the Rail System;
- (c) manage, operate and maintain the Rail System and regulate the use thereof by third parties;
- (d) demand, collect and appropriate Fare from Users liable for payment of Fare for using the Rail System or any part thereof and refuse entry of any User if the Fare due is not paid;
- (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
- (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

(g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Rail System nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

3.1.3 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 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes (the “**Real Estate Development**”) with the right to sub-license any or all parts thereof by means of Project Agreements.

ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Government in accordance with Article 9, at any time after 120 (one hundred and twenty) days from the date of this Agreement or on an earlier day acceptable to the Government, by notice require the Government to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Government shall be deemed to have been fulfilled when the Government shall have:

- (a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;
- (b) procured for the Concessionaire the Right of Way to the Site required for construction of the rail track from Miyapur to L.B.Nagar (the “**Corridor-I**”), Jubilee Bus Station to Falaknuma (the “**Corridor-II**”) and Nagole to Shilparamam (the “**Corridor-III**”);
- (c) issued the Fare Notification; and
- (d) procured approval of the Railway authorities for construction of bridges and underpasses over or under a railway line, as the case may be, in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval. For the avoidance of doubt, the Concessionaire agrees and undertakes that it shall, within 90 (ninety) days of the date hereof, provide the general arrangement drawings required for such approval of the Railway authorities.

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

- (a) provided Performance Security to the Government;
- (b) executed and procured execution of the Escrow Agreement;

- (c) executed and procured execution of the Substitution Agreement;
- (d) executed and procured execution of the Shareholder's Agreement;
- (e) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (f) executed the Financing Agreements and delivered to the Government 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (g) delivered to the Government 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (h) delivered to the Government from the Selected Bidder, its confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- (i) delivered to the Government a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

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

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

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

4.2 Damages for delay by the Government

In the event that (i) the Government does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Government shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one

per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Government or due to Force Majeure, the Concessionaire shall pay to the Government Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security.

ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Rail System and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 Subject to the provisions of Clause 21.3.1, the Concessionaire shall install, operate and maintain the rolling stock and equipment necessary and sufficient for handling Users equivalent to 110% (one hundred and ten per cent) of the Average PHPDT.
- 5.1.5 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Rail System;
 - (c) perform and fulfil its obligations under the Financing Agreements;
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
 - (e) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;

- (f) 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;
- (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (h) procure that all facilities and amenities within the Rail System are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same;
- (i) ensure that Users are treated with due courtesy and consideration and provided with ready access to services and information;
- (j) support, cooperate with and facilitate the Government in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (k) transfer the Rail System to the Government upon Termination of this Agreement, in accordance with the provisions thereof.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Government the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Government 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 Government 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 Government to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Government. No review and/ or observation of the Government 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 Government be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Government if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Government, 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 Government. For the avoidance of doubt, the Government acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development without prior written approval of the Government, which approval the Government may, in its discretion, deny if such sub-licence, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Government under this Agreement or Applicable Laws; provided that the provisions of this Clause 5.2.4 shall not apply where the Concessionaire grants a sub-licence for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Government does not deny the approval required under this Clause 5.2.4 within a period of 60 (sixty) days from the date of receiving a notice along with full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-licence, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.
- 5.2.5 Notwithstanding anything to the contrary contained in Clause 5.2.4, the Concessionaire shall not sub-licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Real Estate Development at any time prior to the COD. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.
- 5.2.6 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Government 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 Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Government and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Government an acknowledgment and undertaking, in a form acceptable to the Government, from the counter party(ies) of

each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Government in the event of Termination or Suspension.

- 5.2.7 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Government from national security and public interest perspective, the decision of the Government in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security and public interest perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Government.
- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- (i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
 - (ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall constitute a Change in Ownership requiring prior approval of the Government from national security and public interest perspective, the decision of the Government in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Government. For the avoidance of doubt, it is expressly agreed that approval of the Government hereunder shall be limited to national security and public interest

perspective, and the Government shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Government shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether 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 not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Obligations relating to Golden Share

5.4.1 The Concessionaire and the Selected Bidder shall execute an agreement with the Government, substantially in the form specified at Schedule-W (the “**Shareholders’ Agreement**”), providing for the issue and allotment of one non-transferable equity share of the Company (the “**Golden Share**”) in favour of the Government, and shall provide for the following:

- a) appointment of a nominee of the Government on the Board of Directors of the Concessionaire;
- b) an irrevocable undertaking that the rights vested in the Government shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Concessionaire or any of its Associates or Affiliates;

- c) an irrevocable undertaking that any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Government herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking; and
- d) any other matter mutually agreed upon between the Parties.

5.4.2 The Parties expressly agree that the Shareholders' Agreement shall further provide that so long as the Government holds the Golden Share, an affirmative vote of the Government or the Director appointed by the Government shall be necessary and required for the passing of, by the General Meeting of the Company or the meeting of Board of Directors thereof, as the case may be, any resolution providing for all or any of the following or any matter incidental or consequential thereto:

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Company;
- (d) to purchase the Company's own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Company outside the limits of the State;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a director or his relative or partner or firm or private company holding an office or place of profit, except that of managing director, manager, banker, or trustee for debenture-holders of the Company;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10 per cent of the Company's paid-up share capital;
- (m) to apply to a Court to wind-up the Company;
- (n) to wind-up the Company voluntarily;
- (o) for various other matters pertaining to the winding up of the Company; and

- (p) any other matter which is required by the Companies Act, 1956 to be passed by a special resolution of the shareholders of the Company.

5.4.3 The Parties agree that the Shareholders' Agreement shall provide that till the time the Government holds the Golden Share, it shall be entitled to nominate a person of its choice for appointment as a non-retiring Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as Director in accordance with the Applicable Laws.

5.5 Obligations relating to employment of foreign nationals

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

5.6 Obligations relating to employment of trained personnel

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

5.7 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall, at each Station, set up and operate a medical aid post (the "**Medical Aid Post**") equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

5.8 Obligations relating to aesthetic quality of the Rail System

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Rail System and achieve integration of the Rail System with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects and town planners of repute for ensuring that the design of the Rail System meets the aforesaid aesthetic standards.

5.9 Obligations relating to noise control

The Concessionaire shall take all such measures as may be necessary in accordance with Applicable Laws and Good Industry Practice to control and mitigate the noise arising from the Rail System and its impact on Users and the neighbourhood.

5.10 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 the Government, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.11 Branding of Rail System

The Rail System or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. The Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Rail System to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may, at every station, display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Rail System shall be known, promoted, displayed and advertised by the name of Hyderabad Metro Rail.

5.12 Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the physically or visually challenged and for elderly persons using the Rail System.

5.13 Integration with other transportation systems and new corridors

The Concessionaire shall plan and design the Rail System to cater for interchange facilities/ integration with other transport systems and new corridors that the Government may take up at a future date. This integration shall include common ticketing and Fare integration. The Government shall have powers to direct the Concessionaire to allow the use of the Rail System facilities by other transport systems in case of emergency and the Concessionaire shall abide by such direction. The Government will not incur any financial liability as a consequence of the same.

ARTICLE 6

OBLIGATIONS OF THE GOVERNMENT

6.1 Obligations of the Government

- 6.1.1 The Government shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Government agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Rail System;
 - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
 - (c) procure that no barriers are erected or placed on or about the Rail System by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Rail System;
 - (e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Rail System;
 - (f) assist the Concessionaire in procuring Police assistance for regulation of traffic, removal of trespassers and security on or at the Rail System;
 - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.5, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Government shall maintain the roads and pathways along the Rail System alignment, at its own cost and expense, so that its traffic worthiness and safety are at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the Appointed Date. For the avoidance of doubt, the Government shall undertake only routine maintenance during the Development Period, and it shall undertake special repairs only for ensuring safe operation of the roads and pathways along the Rail System alignment, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.3 Obligations relating to Competing Facilities

The Government shall procure that during the subsistence of this Agreement, neither the Government nor any Government Instrumentality shall, at any time before the 25th (twenty fifth) anniversary of the Appointed Date, construct or cause to be constructed any Competing Facility; provided that the restriction herein shall not apply if the Average PHPDT on Corridor-I, Corridor-II and/or Corridor-III, as the case may be, in any two consecutive years exceeds 90% (ninety per cent) of the designed capacity specified in Clause 29.3.1. Upon breach of its obligations hereunder, the Government shall be liable to payment of compensation to the Concessionaire under and in accordance with Clause 35.4, and such compensation shall be the sole remedy of the Concessionaire.

6.4 Obligations relating to supply of electricity

The Government shall procure that the Rail System gets priority in the supply of electricity from the grid and the tariff thereof shall be determined on commercial principles such that the Rail System is not required to subsidise any or all other segments of electricity consumers. The Government shall further procure that in the event the Concessionaire receives a supply of electricity from any source other than the area distribution company, it shall be deemed to be a supply from a captive power station under and in accordance with the provisions of Sections 9 and 42 of the Electricity Act, 2003. For the avoidance of doubt, this Clause 6.4 is not applicable to Real Estate Development.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Government that:

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

aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the Selected Bidder, together with its Associates, hold not less than 51% (fifty one per cent) of its issued and paid up Equity as on the date of this Agreement and shall continue to hold at least 51% (fifty one per cent) of the Equity at all times until the 2nd (second) anniversary of the COD of the Project;
- (l) the Selected Bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the Selected Bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Government to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Rail System shall pass to and vest in the Government on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Government, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Government or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith; and
- (q) all information provided by the Selected Bidder in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and warranties of the Government

The Government represents and warrants to the Concessionaire that:

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

7.3 Disclosure

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

ARTICLE 8

DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Government or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Government makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Government in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Government shall not be liable for the same in any manner whatsoever to the Concessionaire, the Selected Bidder and their Associates or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Government to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Government contained in Clause 8.1.1 and shall not in any manner shift to the Government any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Government shall not be liable in any manner for such risks or the consequences thereof.

Part III
Development and Operations

ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Government no later than 180 (one hundred and eighty) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs.360 crore (Rupees three hundred and sixty crore) in the form set forth in Schedule-F (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Government shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (one hundred and eighty) days from the date of this Agreement, the Government may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Government shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the

Government shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for 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. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Government shall release the Performance Security forthwith.

ARTICLE 10

RIGHT OF WAY

10.1 The Site

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

10.2 Licence, Access and Right of Way

- 10.2.1 The Government 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 Government shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Government, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.
- 10.2.3 The licence, 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 two existing lanes along the alignment of the Rail System or an alternative thereof are open to road traffic at all times during the Construction Period.

- 10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Government to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.5 The Concessionaire hereby irrevocably appoints the Government (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Government, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees on the Site are property of the Government except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Government Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Government to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Government shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10 % (ten per cent) of the total area of the Site required and necessary for the Rail System, and in the

event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way, the Government shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Government acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of a continuous rail track.

- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Government and undertake its removal at its cost and expenses.
- 10.3.4 The Government shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 1,000 (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.
- 10.3.5 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 before the Project 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 purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.
- 10.3.6 The Concessionaire shall, if so required by the Government, procure on behalf of the Government, on the terms and to the extent specified by the Government, the additional land required for Stations, ancillary buildings, maintenance depots and electric sub-stations or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Government; provided that the

Concessionaire may, by notice given to the Government no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Government to initiate and undertake proceedings for acquisition of such land under the provisions of the Applicable Laws and the Government shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Government in accordance with the Act; provided also that the land to be acquired by the Government hereunder as a part of the Site shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the Stations, ancillary buildings, maintenance depots, electric sub-stations and approach roads thereof shall conform to the provisions of Schedule-B and Schedule-C. It is further agreed that the Government may, at any time after the Bid Date, suo moto acquire the land required hereunder.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Government to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Government 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 Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Government and Independent Engineer

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

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Government or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Government forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Government. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Government, undertake shifting of any utility including electric lines, water pipes and telephone cables, to an appropriate location or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Rail System. The cost of such shifting shall be borne by the Government or by the entity owning such utility, if the Government so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 New utilities and transport systems

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

11.3.2 Without prejudice to Clause 5.13 of this Agreement, the Government may, by notice require the Concessionaire to connect any adjoining transport system, including a rail system, to the Rail System, and the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Government's cost in accordance

with Article 16. The maintenance of such connecting portion shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

11.3.3 The Government may by notice require the Concessionaire to connect, through a paved road, any public facility or amenity to a Station, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road required on the Site for enabling the Users to access the adjacent urban roads shall be constructed and maintained by the Concessionaire as a part of the Rail System.

11.4 Felling of trees

The Government shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Government for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Rail System. The cost of such felling shall be borne by the Government, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Government and shall be disposed in such manner and subject to such conditions as the Government may in its sole discretion deem appropriate.

ARTICLE 12

CONSTRUCTION OF THE RAIL SYSTEM

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Government and the Independent Engineer its 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) appoint its representative duly authorised to deal with the Government in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Rail System under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

12.2.1 During the Construction Period, the Concessionaire shall maintain, at its cost, the existing roads along the alignment of the Rail System so that their traffic worthiness and safety are 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 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. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the existing roads.

12.2.2 Notwithstanding anything to the contrary contained in Clause 12.2.1, the Parties agree that in the event the Concessionaire undertakes its Construction Works in phases, it may divide the Rail System into sections of not less than 2 (two) kilometres each and commence work in such sections on different dates. Upon division into sections, the Concessionaire shall assume maintenance obligations under this Clause 12.2 on and from the date 60 (sixty) days prior to commencement of Construction Works in such section, and its maintenance obligations hereunder shall cease after the works

affecting the road have been completed and the section of road is reverted to the Government or a nominee thereof in a condition determined by the Independent Engineer as satisfactory in accordance with Good Industry Practice.

12.3 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the 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 field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent 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 shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Government be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Government for review and comments, its Drawings relating to alignment of the Rail System, finished road level, location and layout of the maintenance depots and general arrangement drawings of major bridges and grade separators, and the Government 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 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and

- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Government and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Government, reflecting the Rail System as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Rail System and setback lines, if any, of the buildings and structures forming part of Project Facilities.

12.4 Construction of the Rail System

- 12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Rail System as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 1826th day (one thousand eight hundred and twenty sixth day) from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that construction of the Rail System shall be completed on or before the Scheduled Completion Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Date shall not apply to Real Estate Development.
- 12.4.2 The Concessionaire shall construct the Rail System 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 Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Government, it shall pay Damages to the Government in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Government to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Government under this Agreement, including the right of Termination thereof.
- 12.4.3 In the event that the Rail System is not completed within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Government or due to Force Majeure, the Government shall be entitled to terminate this Agreement.

ARTICLE 13

MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Government 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.

13.2 Inspection

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

13.3 Tests

- 13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Government to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.
- 13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out

remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Rail System 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 the Project Completion Date.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Government 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 Government, such work threatens the safety of the Users and pedestrians.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Government and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Government recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Government shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Government, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or 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 Government, the Preservation Costs shall be borne by the Government.

13.5.4 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 to which the Concessionaire is reasonably entitled, and shall notify the Government accordingly whereupon the Government shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

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

ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 60 (sixty) days prior to the likely completion of the Rail System, the Concessionaire shall notify the Independent Engineer of its intent to subject the Rail System to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Government who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer. For the avoidance of doubt, it is agreed that the provisions of this Article 14 shall not apply to Real Estate Development.

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

14.2 Completion Certificate

Upon completion of Construction Works, and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Government a certificate substantially in the form set forth in Schedule-J (the “**Completion Certificate**”).

14.3 Provisional Certificate

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the “**Provisional Certificate**”) if the Tests are successful and the Rail System can be

safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “**Punch List**”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Government.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under Clause 14.3.1 may, upon request of the Concessionaire to this effect, be issued for operating part of a line also, if in the opinion of the Independent Engineer such part of the line can be operated safely and without causing any inconvenience to the Users. For the avoidance of doubt it is further agreed that the issuance of part Provisional Certificate shall not absolve the Concessionaire of its obligations to complete the remaining part of the Rail System on or prior to the Scheduled Completion Date. The part Provisional Certificate can be withheld if the unfinished part has not adhered to the Project Milestones. This shall also be subject to the covenants of the Agreement especially Clause 12.4 and Clause 15 being applicable to the unfinished part(s) of the Rail System.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Government or due to Force Majeure, the Government shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Engineer. 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 Government or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions

constituting Force Majeure or for reasons solely attributable to the Government, shall entitle the Government to terminate this Agreement.

14.5 Withholding of Provisional Certificate

- 14.5.1 If the Independent Engineer determines that the Rail System or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Government and the Concessionaire. Upon receipt of such a report from the Independent Engineer and after conducting its own inspection, if the Government is of the opinion that the Rail System is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Rail System and direct the Independent Engineer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Government may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

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

ARTICLE 15

ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

The Rail System 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 Article 14, and accordingly the commercial operation date of the Rail System shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Rail System or part thereof shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fare in accordance with the provisions of Article 27, provided, however, that the entry of Rail System or part thereof into commercial service shall always be subject to compliance with the provisions of Clause 18.3.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Government or due to Force Majeure, the Concessionaire shall pay Damages to the Government in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

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

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Government determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Government 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 Government 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 Government to the extent such cost is certified by the Independent Engineer as reasonable.

- 16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Government 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 Government 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 Government may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.
- 16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

- 16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Government 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 Government 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 Government to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Government shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.
- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Government in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund

within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 Restriction on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Government shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Rail System; provided that in the event that the Government 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 Rail System and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Government to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Government may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 1% (one per cent) of the bid amount to the Government, 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 percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Rail System. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

- 16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Government, the Government may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Government, 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 41.3. It is further agreed that the liability of the Government under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a dispute, the Dispute Resolution Procedure shall apply.
- 16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Government hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

- (a) permitting safe, smooth and uninterrupted flow of traffic on the Rail System during normal operating conditions;
- (b) collecting and appropriating the Fare;
- (c) minimising disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Rail System by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Rail System;
- (e) undertaking routine maintenance including prompt repairs of track, via ducts, underpasses, skywalks, joints, drains, embankments, structures, signaling systems, communication systems, lighting, rolling stock and Traction System;
- (f) undertaking major maintenance such as track replacement, repairs to structures, and repairs and refurbishment of fare collection system, signaling and communication system, major overhaul of rolling stock, overhaul of Traction System and other equipment;
- (g) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Rail System;
- (h) protection of the environment and provision of equipment and materials therefor;
- (i) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Rail System;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies;
- (k) complying with Safety Requirements in accordance with Article 18;

- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (m) maintaining punctuality and reliability in operating the Rail System; and
- (n) maintaining a high standard of cleanliness and hygiene on the Rail System;

17.1.2 The Concessionaire shall remove promptly from the Rail System all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Rail System in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at Jawaharnagar dump yard of Greater Hyderabad Municipal Corporation.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads, over-passes, under-passes or other structures situated on the Site but not forming part of the Rail System.

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

17.3.1 Not later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, 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 Rail System in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Government and 2 (two) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Asset, including replacement thereof, such that its overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Government 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 Rail System;
- (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) intervals of carrying out intermediate and periodic overhaul of rolling stock, track and Traction System.

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

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

17.5 Safety, breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafe conditions, track damage, rolling stock, 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.

17.5.2 The Concessionaire’s responsibility for rescue operations on the Rail System 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. For this purpose, it shall maintain and operate 3 (three) round-the-clock road vehicles and 3 (three) relief trains with rescue equipment and position the trains in a manner that allows access to the accident site from both the ends.

17.6 De-commissioning due to Emergency

- 17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Rail System, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Rail System 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 Government without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Government may give for dealing with such Emergency.
- 17.6.2 The Concessionaire shall re-commission the Rail System 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 Rail System and shall notify the Government of the same without any delay.
- 17.6.3 Any decommissioning or closure of any part of the Rail System and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Section closure

- 17.7.1 The Concessionaire shall not close any section of the Rail System for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Engineer, and a copy thereof furnished to the Government, at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Engineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Government.
- 17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any one trackway for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.
- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the

event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Government calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fare for that section, for each day of delay until the section has been re-opened for traffic.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the 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 Fare, 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.

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

17.9 Government's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Rail System 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 Government or the Independent Engineer, as the case may be, the Government 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 Government as Damages. For the avoidance of doubt, the right of the Government under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.

17.9.2 The Government shall have the right, and the Concessionaire hereby expressly grants to the Government the right, to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in

accordance with the instructions of the Government under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the Government

- 17.10.1 If in the reasonable opinion of the Government, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Government may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Government may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Government shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Government in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Government shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.
- 17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Government 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 Rail System or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Government 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 Government. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Government may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Government, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Rail System

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

17.12 Modifications to the Rail System

The Concessionaire shall not carry out any material modifications to the Rail System save and except where such modifications are necessary for the Rail System 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 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. Without prejudice to the generality of the foregoing, the following shall constitute material modifications:

1. Opening of additional lines/ extended portion of line;
2. Opening of additional Stations and junctions;
3. Remodeling of yards and rebuilding of bridges and viaducts;
4. Any alteration or reconstruction materially affecting the structural character of any work;
5. Any alteration to the Signaling System; and
6. Any other item in the opinion of Independent Engineer having material effect on safety.

For the avoidance of doubt, if any modification to the Rail System has a material effect on the safety of Users, the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure specified in Clause 18.3. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Rail System 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 Rail System 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 Government or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Rail System.

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

17.14 Barriers and diversions

The Government shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Rail System except for reasons of Emergency, national security, or law and order. The Government shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions, or closing down of approach roads to the Rail System that may cause a material adverse effect on the movement to and from the Rail System.

17.15 Advertising on the Rail System

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall diminish the aesthetic quality of the Rail System or violates Applicable Laws. All advertising on the Rail System shall also conform to Good Industry Practice. For the avoidance of doubt, any dispute or interpretation relating to Good Industry Practice shall be determined by reference to the practices followed by any two of the Delhi, Hong Kong, London and Paris Metro rail systems as may be chosen by the Concessionaire.

ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Rail System, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 18.1.2 The Government shall appoint an experienced and qualified firm or organisation (the “**Safety Consultant**”) for carrying out safety audit of the Rail System in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the “**Safety Fund**”) to be funded, owned and operated by the Government or a substitute thereof.

18.3 Safety Certification prior to COD

The Government shall, not later than one year prior to the Scheduled Completion Date, or the likely COD notified by the Concessionaire, as the case may be, appoint Commissioner of Railway Safety under Applicable Laws (the “**Safety Commissioner**”) to observe any or all the Tests specified in Schedule-I to determine and certify that the Rail System 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 shared equally between the Concessionaire and the Government; provided further that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent test shall be borne entirely by the Concessionaire.

ARTICLE 19

MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly/ Daily status reports

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

19.2 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Government and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Rail System relating to the safety and security of the Users and Rail System. A weekly and monthly summary of such reports shall also be sent within three days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2, accidents and unusual occurrences on the Rail System shall include:

- (a) death or injury to any person;
- (b) broken or buckled rails;
- (c) damaged or dislodged fixed equipment;
- (d) obstruction in opening/ closing of doors of a coach;
- (e) failure of cab signaling for more than 5 (five) minutes ;
- (f) damage to or displacement of traction power conductor; or loss of traction power;
- (g) any obstruction on the track;
- (h) cancellation of any scheduled train or loss of punctuality of trains by more than 10 (ten) minutes in each case;
- (i) disablement of any train during operation;
- (j) communication failure affecting the running of trains;
- (k) smoke or fire;
- (l) flooding of tracks; and
- (m) such other relevant information as may be reasonably required by the Government or the Independent Engineer.

19.3 Inspection

The Independent Engineer shall inspect the Rail 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 Government and the Concessionaire within 7 (seven) days of such inspection.

19.4 Tests

For determining that the Rail System conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Government to the Concessionaire.

19.5 Remedial measures

19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Independent Engineer and the Government within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.5.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Rail System into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Rail System conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Government shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.6 Monthly Fare Statement

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

ARTICLE 20

TRAFFIC REGULATION AND SECURITY

20.1 Traffic regulation by the Concessionaire

- 20.1.1 The Concessionaire shall regulate the traffic on the Rail System in accordance with Applicable Laws and subject to the supervision and control of the Government or a substitute thereof empowered in this behalf under the Applicable Laws.
- 20.1.2 The Concessionaire shall, in consultation with the Government 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 Rail System.
- 20.1.3 The Concessionaire shall have the right and obligation to manage, operate and regulate the Rail System on a common carrier basis providing non-discriminatory services to all persons.

20.2 Security

- 20.2.1 All capital expenses towards security equipments and systems and the costs of operation and maintenance thereof shall be borne by the Concessionaire. The Government 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 Rail System, and incur the recurring cost towards salaries of security agencies such as Central Industrial Security Force (CISF) or any other security agencies belonging to government organizations, 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 Rail System.
- 20.2.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Rail System and shall be responsible for the security arrangements within the Rail System in order to maintain orderly conduct of its business and the security thereof.
- 20.2.3 The Concessionaire shall abide by and implement any instructions of the Government for enhancing the security within and around the Rail System. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Government 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 Rail System

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

- 20.2.4 Subject to the rights of the Concessionaire under this Clause 20.2, the Government 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 Rail System.
- 20.2.5 The Government agrees that it shall, at the request of the Concessionaire, procure and provide the services of security forces of the Government on a best effort basis.
- 20.2.6 The Government shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents and the Users of the Rail System are allowed free ingress and egress from the limits of the Rail System without any unreasonable interference by the personnel of the Government, including the security personnel employed by or on behalf of the Government.
- 20.2.7 The Government and the Concessionaire shall jointly make best endeavours to ensure that the security of the Rail System is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 80% (eighty percent) of such increase to the Users by means of a corresponding increase in Fares.

ARTICLE - 21

KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Rail System such that it achieves or exceeds the performance indicators specified in this Article 21 (the “**Key Performance Indicators**”)

21.2 Operation of Trains

21.2.1 The Trains shall be operated continuously such that the first Train in each direction shall depart no later than 0500 hours and the last Train shall terminate not earlier than 2330 hours at the frequency specified in this Clause 21.2; provided that on Sundays the duration of services may be reduced by 4 (four) hours.

21.2.2 The Trains in each direction shall be operated such that the difference between arrival time of two Trains at any Station shall not exceed 3 (three) minutes; provided that such difference may be increased, subject to a maximum of 15 (fifteen) minutes, depending upon the number of Users in the respective hour.

21.2.3 The average speed of train movement from terminal to terminal during any hour of the day, including stops at the Stations, shall not be less than 30 (thirty) kilometres per hour. For the avoidance of doubt, stops at the Stations shall not be less than 20 (twenty) seconds each.

21.2.4 The punctuality for the day, calculated at the terminal Stations with respect to the time table, shall be more than 95% (ninety five per cent). For the avoidance of doubt, if the arrival of a train at the terminal Station is delayed by more than 1 (one) minute, it will be deemed to have lost punctuality.

21.3 Provision of coaches

21.3.1 The number of coaches in each train and the frequency of Trains per hour shall be such that the average number of Users does not exceed 6 (six) persons per square metre of the floor space available for use by passengers inside a coach during 4 (four) Peak Hours in a day and is less than 4 (four) such persons per square metre during other hours; provided that the restriction herein contained shall not apply if the concessionaire is operating 22 (twenty two) trains per hour in each direction with every Train having a floor space of not less than 325 (three hundred and twenty five) square metres.

21.4 Operation of Stations

- 21.4.1 The Parties hereto agree that the primary purpose of a Station is to provide space for the Users who normally stay at a Station for a period of time no longer than necessary to wait for and enter a departing train or to exit the Station after arriving on an incoming Train.
- 21.4.2 The design, construction, operation and maintenance of the Stations shall be such that:
- (a) a User alighting at the platform should be able to reach a point outside the Station in not more than 3 (three) minutes of brisk walking and a User crossing the fare collection point should be able to reach the platform in not more than 2 (two) minutes of brisk walking; and
 - (b) in case of emergency, evacuation from any point on the platforms to a point of safety in an open space within or outside the Station shall not exceed 100 (one hundred) metres.
- 21.4.3 The entry and exit gates, including the automatic ticket verification machines, shall be so designed and operated that the waiting time for Users shall not exceed 2 (two) minutes during Peak Hour.
- 21.4.4 The Concessionaire shall provide adequate number of ticket vending machines and ticket counters such that the waiting time for Users shall not exceed 2 (two) minutes during Peak Hour.

21.5 Monthly status report

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 21 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Rail System. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 21.6.

21.6 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 21 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. The Damages due and payable under this Clause 21.6 shall be determined at the rate of 1% (one per cent) of the total revenue from Fares in the respective quarter for every shortfall of 10% (ten per cent) in any single performance indicator specified in this Article 21; provided, however, that the

Government 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.

21.7 ISO certification

21.7.1 The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2000 certification or a substitute thereof for all the facilities at the Rail System, and shall provide a certified copy thereof to the Government forthwith.

21.7.2 In the event of default in obtaining the certification specified in Clause 21.7.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Government an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Rail System.

21.7.3 If the period of default in obtaining the ISO certification under this Clause 21.7 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Government in an amount equal to 2% (two per cent) of the total monthly revenue from Fare for every 1 (one) month of default.

21.8 Passenger Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Users (the “**Passenger Charter**”) substantially in the form specified in Schedule-N. The Concessionaire shall at all times be accountable and liable to Users in accordance with the provisions of the Passenger Charter and Applicable Laws.

ARTICLE 22

TRAFFIC CENSUS AND SAMPLING

22.1 Traffic census and Train operations

The Concessionaire shall install, maintain and operate an electronic/computerised fare collection system and a train control system, and collect data relating to PKM, the number of Users, distance travelled, frequency and capacity of Trains, travel time and Fare collected. A statement of such data shall be compiled and furnished forthwith by the Concessionaire to the Government substantially in the forms specified in Schedule-M.

22.2 Traffic survey

The Government may require the Concessionaire to conduct, during each year of the Concession Period, a detailed traffic survey at such frequency and on such days as the Government may specify, provided that the cumulative period of such survey shall not exceed 7 (seven) days in a year. The Concessionaire shall, at its own cost, carry out or cause to be carried out, the survey in the form and manner reasonably specified by the Government and furnish a detailed report thereof within 15 (fifteen) days of the completion of each survey. For the avoidance of doubt, the Government may also conduct traffic surveys, in such manner as it deems fit and at its own cost, through any agency designated by it for this purpose.

22.3 Traffic sampling

22.3.1 For determining the actual traffic on the Rail System, the Government shall be entitled to inspect the relevant records of the Concessionaire, and may, at its own cost, undertake traffic sampling substantially in the manner set forth in Schedule-O or in such manner as the Parties may agree upon. The Concessionaire shall provide such assistance as the Government may reasonably require for such User traffic sampling.

22.3.2 If the traffic sampling pursuant to this Clause 22.3 demonstrates that the actual traffic is more than the traffic reported by the Concessionaire, the traffic determined by the traffic sampling shall be deemed to be the traffic for purposes of this Agreement and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, Realisable Fare for any comparable period shall be calculated with reference to the traffic determined hereunder.

22.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Government and other related entities for

exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol for Electronic Data Interchange (the “EDI”) as the Government may specify. For the avoidance of doubt, it is agreed that the form specified in Schedule-M may be modified by the Government from time to time for conforming to the requirements and output of EDI.

ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Government shall appoint a consulting engineering firm from a panel of 6(six) firms or bodies corporate, constituted by the Government substantially in accordance with the selection criteria set forth in Schedule-P, 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 5(five) years. On expiry or termination of the aforesaid period, the Government may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-P to be the Independent Engineer for a term of 5 (five) years, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 23 shall not include Real Estate Development.

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

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Government and subject to the limits set forth in Schedule-P, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Government within 15 (fifteen) days of receiving a statement of expenditure from the Government.

23.4 Termination of appointment

23.4.1 The Government 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 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Government and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Government shall hold a tripartite meeting with the Concessionaire and Independent

Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Government and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Government shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

The Government shall require the Independent Engineer to designate and notify to the Government 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.

23.6 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.

Part IV
Financial Covenants

ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Government in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay, and for a further period not exceeding 80 (eighty) days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Government in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

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

24.2 Termination due to failure to achieve Financial Close

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

24.2.2 Upon Termination under Clause 24.2.1, the Government shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if

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

ARTICLE 25

GRANT

25.1 Grant

25.1.1 The Government agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum set forth in the Bid, namely, Rs.1,458 crore (Rupees one thousand four hundred and fifty eight crore) only, in accordance with the provisions of this Article 25 (the “**Grant**”).

25.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 25.2, and the balance remaining, if any, shall be disbursed as O&M Support in accordance with the provisions of Clause 25.3.

25.2 Equity Support

25.2.1 Subject to the conditions specified in this Clause 25.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “**Equity Support**”).

25.2.2 The Equity Support shall not exceed the sum specified in the Bid and as accepted by the Government, but shall in no case be greater than the Equity, and shall be further restricted to a sum not exceeding 30 % (thirty per cent) of the Total Project Cost. For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause 25.2.2 shall include Equity Support.

25.2.3 Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds thereafter remaining to be disbursed by the Senior Lenders under the Financing Agreements. The Government shall disburse each tranche of the Equity Support as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars.

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

25.2.5 Subject to the provisions of the Scheme of Financial Support to Public Private Partnership in Infrastructure and the Jawaharlal Nehru National Urban Renewal Mission as notified by the Central Government (the “**Schemes for Financial Assistance**”), the Government shall, for funding the Grant specified in Clause 25.1.1, use its best endeavours and provide all reasonable support to the Concessionaire for obtaining viability gap funding under the Schemes for Financial Assistance. For the avoidance of doubt, it is expressly agreed that in the event of the Concessionaire being able to receive such viability gap funding for the Project, the same shall, for the

purposes of this Agreement be deemed to be Grant by the Government hereunder, to be disbursed in accordance with the provisions of the Schemes for Financial Assistance. It is further agreed that the Government shall at all times discharge its obligation to disburse Grant under and in accordance with this Article 25 whether or not funds are disbursed to the Concessionaire under the Schemes for Financial Assistance.

25.3 O&M Support

- 25.3.1 The balance of the Grant, if any, remaining after disbursement of the Equity Support shall be disbursed to the Concessionaire in accordance with Clause 25.3.2 for meeting O&M Expenses and Debt Service of the Project (the “**O&M Support**”).
- 25.3.2 The O&M Support shall be disbursed by the Government in quarterly instalments and the first such instalment shall be released within 90 (ninety) days of COD. Each instalment shall be a sum equal to 7.5 (seven point five) per cent of the Equity Support and such instalments shall be disbursed by the Government until the Grant is exhausted.

ARTICLE 26

CONCESSION FEE

26.1 Concession Fee

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

26.2 Additional Concession Fee

26.2.1 Without prejudice to the provisions of Clause 26.1, the Concessionaire agrees to pay to the Government for the 21st (twenty-first) year commencing from COD, an additional concession fee equal to 0.5% (zero point five per cent) of the total Realisable Fare during that year, net of any taxes on Fare; and for each subsequent year commencing from the anniversary of the date on which such additional concession fee first became payable hereunder, the additional concession fee shall be determined by increasing the proportion of the additional concession fee to the total Realisable Fare in the respective year by an additional 0.5% (zero point five per cent) as compared to the immediately preceding year; provided that the additional concession fee payable under this Article 26.2.1 shall be subject to a ceiling of 10% (ten per cent) of the total Realisable Fare in the respective year. For the avoidance of doubt and by way of illustration, the additional concession fee for the 22nd (twenty-second) and 23rd (twenty-third) years commencing from COD shall be equal to 1% (one per cent) and 1.5% (one point five per cent) respectively of the total Realisable Fare for the respective years.

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

26.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 26 shall be due and payable in monthly instalments. Within 7 (seven) days of the close of each month, the Concessionaire shall pay to the Government against the Concession Fee, a provisional amount calculated on the basis of total Realisable Fare of the immediately preceding month, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year.

26.4 Verification of Realisable Fare

26.4.1 The Government may, in order to satisfy itself that the Concessionaire is reporting its Realisable Fare honestly and faithfully, depute its representatives to the Stations,

centralised controls of automatic Fare collection system and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual revenues from Fare.

- 26.4.2 If the verification of Fare revenues pursuant to this Clause 26.4 demonstrates that the Realisable Fare is more than the amount reported by the Concessionaire, the Government shall, for the purpose of determining the Fare revenues, be entitled to undertake traffic sampling for a continuous period of 7 (seven) days in accordance with Clause 22.3. The Parties hereto agree that if the Average Daily Fare revenue determined under this Clause 26.4.2 exceeds the average daily Realisable Fare reported by the Concessionaire during the preceding month by 1% (one percent) thereof, the difference between such Fare revenue and Realisable Fare shall be multiplied by 180 (one hundred and eighty) and the product thereof shall be paid as Damages by the Concessionaire to the Government, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Realisable Fare payable under this Clause 26.4.2.

ARTICLE 27

USER FARE

27.1 Collection and appropriation of Fare

27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fare from the Users in accordance with this Agreement and the Fare Notification set forth in Schedule-R; provided that for ease of payment and collection, such Fare shall be rounded off to the nearest 1 (one) rupee in accordance with the Fare Notification; provided further that the Concessionaire may determine and collect Fare at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users.

27.1.2 The Concessionaire acknowledges and agrees that upon payment of Fare, any User shall be entitled to use the Rail System and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.2 Revision of Fare

27.2.1 The Parties hereto acknowledge and agree that subject to and in accordance with the Fare Notification, the Fare specified therein as applicable on COD (the “**Base Fare**”) shall be revised annually on April 1 in accordance with the provisions of the Fare Notification; provided, however, that such revision shall not be effected until a period of 6 (six) months has elapsed from the date of the immediately preceding determination of Fare hereunder. For the avoidance of doubt, it is agreed that revision on account of variation in WPI shall be restricted to 60% (sixty per cent) of the variation in WPI occurring between January 31 immediately preceding the date of this Agreement and January 31 of the year of revision hereunder. It is also agreed that the Fare shall be revised in accordance with the provisions of Clause 20.2.7 to include 80% (eighty per cent) of the increase in risk premium consequent to a change in the security environment.

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

27.3 Discounted Fare for frequent Users

27.3.1 The Concessionaire shall, upon request from any person, issue a return pass on payment of a sum equal to 180% (one hundred and eighty per cent) of the Fare payable if it were to undertake a single one-way trip on the Rail System. Such return pass shall entitle the User to undertake a return journey on the same day as the outward journey.

- 27.3.2 The Concessionaire shall, upon request from any person for issue of a daily pass, issue such pass on payment of a sum equal to twice the Fare payable if it were to undertake a single one-way trip on the longest route of the Rail System. Such daily pass shall entitle the User to unlimited travel on the Rail System for the date of issue.
- 27.3.3 The Concessionaire shall, upon request from any person for issue of a weekly pass, issue such pass on payment of a sum equal to ten times the Fare payable if it were to undertake a single one-way trip on the selected section of the Rail System. Such weekly pass shall entitle the User to unlimited travel on such section of the Rail System for one week from the date of issue.
- 27.3.4 The Concessionaire shall, upon request from any person for issue of a monthly pass, issue such pass on payment of a sum equal to forty times the Fare payable if it were to undertake a single one-way trip on the selected section of the Rail System. Such monthly pass shall entitle the User to unlimited travel on such section of the Rail System for one month from the date of issue.

27.4 Fare Contractor

The Concessionaire may appoint a Fare Contractor or any other person to collect the Fare for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fare in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

27.5 Fare collection points

The Concessionaire shall be entitled to set up at its own risk and cost, its temporary or permanent Fare collection counters and gates, or impose such other restrictions on entry to the Rail System, as may reasonably be necessary for preventing evasion of Fare. For the avoidance of doubt, the Concessionaire hereby acknowledges and agrees that it shall establish and operate a system of Fare collection in conformity with Good Industry Practice.

27.6 Additional charge for evasion of Fare

In the event that any person uses the Rail System without payment of Fare due, the Concessionaire shall, subject to Applicable Law and Applicable Permits, be entitled to determine and collect from such person the Fare due and thrice the amount thereof towards predetermined liquidated damages for attempt to make unauthorised use of the Rail System; provided that the determination and collection of such Fare and

liquidated damages shall be at the risk and cost of the Concessionaire and the Government shall not in any manner be liable on account thereof.

27.7 Differential Fare

- 27.7.1 The Concessionaire may, after obtaining prior written approval of the Government which approval the Government may in its discretion deny, determine and collect a higher and discounted Fare (the “**Differential Fare**”) for use of the Rail System during peak and off-peak hours respectively in accordance with this Clause 27.7. For the avoidance of doubt, the provisions of this Clause 27.7 shall not apply to passes or tickets, as the case may be, issued under Clause 27.3.
- 27.7.2 The Concessionaire may designate not more than four hours in a day as peak hours and a period equal to twice the peak hours as off-peak hours. The Concessionaire may determine and collect a premium of up to 25% (twenty five per cent) of the Fare during peak hours or such higher premium as the Government may by order permit. Simultaneously with such premium on peak hour Fare, the Concessionaire shall offer a discount during off-peak hours at a rate equal to the said premium. For the avoidance of doubt, the determination of Differential Fare shall be with reference to the time of entry of a User in a Train.

27.8 Display of Fare

- 27.8.1 The Concessionaire shall, at all entry points of the Stations and near the Fare counters at Stations, prominently display the applicable rates of Fare for information of the Users.
- 27.8.2 The Concessionaire shall, from time to time, inform the Government of the applicable Fare and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fare under and in accordance with the Fare Notification.
- 27.8.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fare payable under the Fare Notification. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Government, refund such excess amounts to the Government along with Damages equal to 25% (twenty five percent) thereof.

ARTICLE 28

REVENUE SHORTFALL LOAN

28.1 Revenue Shortfall Loan

28.1.1 If the Realisable Fare in any Accounting Year shall fall short of the Subsistence Revenue as a result of an Indirect Political Event, a Political Event or a Government Default, as the case may be, the Government shall, upon request of the Concessionaire, provide a loan for meeting such shortfall (the “**Revenue Shortfall Loan**”) at an interest rate equal to 2% (two per cent) above the Bank Rate.

28.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 28.1.1 and contemplated for an Accounting Year has arisen in respect of the first 6 (six) months thereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interest or adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 28.1.

28.1.3 The Government shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 30 (thirty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed account of the Indirect Political Event, Political Event or the Government Default, as the case may be, and its impact on the collection of Fare.

28.2 Repayment of Revenue Shortfall Loan

A sum equal to 50% (fifty per cent) of the ‘profit before tax’ of the Concessionaire, as and when made, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Concessionaire to the Government within 90 (ninety) days of the close of the Accounting Year in which such profits have been made; provided that the Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon no later than one year prior to the expiry of the Concession Period and in the event that any sum remains due or outstanding at any time during such period of one year, the Government shall be entitled to terminate this Agreement forthwith. For the avoidance of doubt, it is agreed that the repayment of Revenue Shortfall Loan shall be in accordance with and subject to the provisions of Article 31.

ARTICLE 29

EFFECT OF VARIATIONS IN TRAFFIC GROWTH

29.1 Effect of variations in traffic growth

29.1.1 The Government and the Concessionaire acknowledge that the PKM per day as on October 1, 2024 (the “**Target Date**”) is estimated to be 214,00,000 (two hundred and fourteen lakhs) (the “**Target Traffic**”), and hereby agree that for determining the modifications to the Concession Period under this Article 29, the actual traffic on the Target Date shall be derived by computing the average of the PKM as determined by traffic sampling to be undertaken, in accordance with Clause 22.3, on the date that falls one year prior to the Target Date, on the Target Date and on the first anniversary of the Target Date (the “**Actual Average Traffic**”). For the avoidance of doubt, it is agreed that traffic sampling shall be undertaken for a continuous period of 7 (seven) days during anytime within 15 (fifteen) days prior to the date specified herein and the average thereof shall be deemed to be the PKM for the purposes of this Clause 29.1.1.

29.1.2 In the event that the Actual Average Traffic shall have fallen short of the Target Traffic by more than 5% (five per cent) thereof or exceeded the Target Traffic by more than 5% (five per cent) thereof, the Concession Period shall be deemed to be modified in accordance with Clause 29.2. For the avoidance of doubt, in the event of any Dispute relating to Actual Average Traffic, the Dispute Resolution Procedure shall apply.

29.2 Modification in the Concession Period

29.2.1 Subject to the provisions of Clause 29.1.2, in the event Actual Average Traffic shall have fallen short of the Target Traffic, then for every 1% (one per cent) shortfall as compared to the Target Traffic, the Concession Period shall, subject to payment of Concession Fee in accordance with this Agreement, be increased by 1.5% (one point five per cent) thereof; provided that such increase in Concession Period shall not in any case exceed a maximum period of 7 (seven) years. For the avoidance of doubt, and by way of illustration, it is agreed that in the event of a shortfall of 8.6% (eight point six per cent) in Target Traffic, the Concession Period shall be increased by 12 % (twelve per cent) thereof.

29.2.2 Subject to the provisions of Clause 29.1.2, in the event Actual Average Traffic shall have exceeded the Target Traffic, then for every 1% (one per cent) excess as compared to the Target Traffic, the Concession Period shall be reduced by 1% (one per cent) thereof; provided that such reduction in Concession Period shall not in any case exceed a maximum period of 3.5 (three and a half) years. For the avoidance of doubt and by way of illustration, it is agreed that in the event of an excess of 8.7% (eight point seven per cent) in Target Traffic, the Concession Period shall be reduced by 8% (eight per cent) thereof:

Provided further that in lieu of a reduction in Concession Period under this Clause 29.2.2, the Concessionaire may elect to pay, in addition to the Concession Fee that would be due and payable if the Concession Period were not reduced hereunder, a further premium equal to 20% (twenty per cent) of the Realisable Fare in the respective years, and upon notice given to this effect by the Concessionaire no later than two years prior to the Transfer Date contemplated under this Clause 29.2.2, the Government shall waive the reduction in Concession Period hereunder and recover the Concession Fee and the aforesaid premium for the period waived hereunder.

29.3 Termination due to congestion

29.3.1 Notwithstanding anything to the contrary contained in this Agreement, if the Average PHPDT in any Accounting Year shall exceed the designed capacity of the Rail System and shall continue to exceed the designed capacity for 4 (four) Accounting Years following thereafter, an Indirect Political Event shall be deemed to have occurred and the Government may in its discretion terminate this Agreement by issuing a Termination Notice and making a Termination Payment under and in accordance with the provisions of Clause 34.9.2; provided that before issuing the Termination Notice, the Government shall inform the Concessionaire of its intention to issue such Termination Notice and grant a period of 180 (one hundred and eighty) days for making a representation, and may, after the expiry of such period, whether or not it has received such representation, in its sole discretion issue the Termination Notice. For the avoidance of doubt, the Parties agree that an Average PHPDT of 50,000 (fifty thousand) for Corridor-I, 35,000 (thirty five thousand) for Corridor-II and 50,000 (fifty thousand) for Corridor-III shall be deemed to be the designed capacity of the Rail System for the purposes of this Clause 29.3:

Provided that in lieu of Termination under this Clause 29.3.1, the Concessionaire may elect to pay, in addition to the Concession Fee due and payable under Article 26 if the Agreement were not terminated, a further premium equal to 20% (twenty percent) of the Realisable Fare from Corridor-I, Corridor-II and /or Corridor-III in the respective years, and upon notice given to this effect by the Concessionaire, the Government shall not issue a Termination Notice under this Clause 29.3.1 and allow the Concessionaire to continue as if the breach hereunder were cured by payment of the said premium. For the avoidance of doubt, the provisions of this Clause 29.3 shall be applied as if each Corridor is a separate Rail System; provided however, that the Termination Notice under this Clause 29.3 shall apply to the entire Rail System.

29.3.2 If the Concessionaire shall have, prior to issue of a Termination Notice under Clause 29.3.1, completed the construction works or provided additional rolling stock, as the case may be, necessary for augmenting the capacity of the Rail System such that its capacity shall have increased sufficiently for carrying the then current traffic in accordance with the provisions of this Agreement and Good Industry Practice, the Indirect Political Event specified in Clause 29.3.1 shall be deemed to have been cured.

ARTICLE 30

CONSTRUCTION OF COMPETING FACILITY

30.1 Restrictions on construction of Competing Facility

30.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 30.2, the Government shall not construct, and shall procure that no Government Instrumentality shall construct or cause to be constructed, any rail transport system, between, inter alia, Miyapur to L.B.Nagar (Corridor-I), Jubilee Bus Station to Falaknuma (Corridor-II) or Nagole to Shilparamam (Corridor-III) (each, the “**Competing Facility**”) for use by traffic at any time before the 25th (twenty - fifth) anniversary of the Appointed Date; provided that the restriction herein shall not apply if the Average PHPDT on Corridor-I, Corridor-II and/or Corridor-III, as the case may be, in any two consecutive years exceeds 90% (ninety per cent) of the designed capacity specified in Clause 29.3.1. For the avoidance of doubt, Competing Facility does not include any rail transport system or other facility connecting, *inter alia*, Miyapur to L.B.Nagar (Corridor-I), Jubilee Bus Station to Falaknuma (Corridor-II) or Nagole to Shilparamam (Corridor-III) if the length of such transport system exceeds the length of the existing route comprising the respective Corridors of the Rail System by 30 % (thirty per cent) thereof. For further avoidance of doubt, bus and existing MMTS rail facilities should not be treated as Competing Facilities.

30.1.2 If the Government shall be in breach of the provisions of Clause 30.1.1, the Concessionaire shall, without prejudice to its other rights and remedies under this Agreement, be entitled to receive compensation from the Government under and in accordance with the provisions of Clause 35.4.

30.2 Modification in the Concession Period

In the event of the Government or any Government Instrumentality constructing or causing construction of any Competing Facility, the following shall apply:

- (a) if the Competing Facility is opened to traffic between the 25th (twenty-fifth) and 35th (thirty fifth) anniversary of the Appointed Date, the Concessionaire shall be entitled to an additional Concession Period, which shall be equal in duration to the period between the opening of the Competing Facility and the 35th (thirty fifth) anniversary. For the avoidance of doubt, if the Competing Facility is opened on the 30th (thirtieth) anniversary, the Concession Period shall be deemed to be increased by a period of five years; and
- (b) if the Concession Period is to be increased in accordance with the provisions of this Clause 30.2, the same shall be added to the Concession Period due to

the Concessionaire under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination.

30.3 Minimum Fare for the Rail System

Upon commissioning of the Competing Facility, the Concessionaire shall continue to collect the Fare, and shall not offer any discounts or reductions in such Fare except with the prior written consent of the Government; provided that the Concessionaire may continue, in the same form and manner, any discounts or reductions that it had offered to any general or special class of Users for a continuous period of three years prior to the opening of the Competing Facility to traffic.

30.4 Minimum Fare for Competing Facility

The Government agrees and undertakes to procure that the fare to be levied and collected from any person using the Competing Facility during the subsistence of this Concession shall at no time be less than 25% (twenty five percent) higher than the Fare levied and collected from similar Users using the Rail System.

ARTICLE 31

ESCROW ACCOUNT

31.1 Escrow Account

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

31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Government, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-S.

31.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package;
- (b) all Fare and any other revenues, from or in respect of the Rail System, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) all payments by the Government, after deduction of any outstanding Concession Fee:

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

31.3 Withdrawals during Concession Period

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Rail System;
- (b) all payments relating to construction of the Rail System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Government in accordance with the provisions of this Agreement, and certified by the Government as due and payable to it;
- (e) Concession Fee due and payable to the Government;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Government as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Government.

31.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Rail System;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Government as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;
- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1 until a Vesting Certificate has been issued by the Government under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.

ARTICLE 32

INSURANCE

32.1 Insurance during Concession Period

32.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Government 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 Government shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

32.1.2 Without prejudice to the provisions contained in Clause 32.1.1, the Concessionaire shall, during the Operations Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project Assets, including assets handed over by the Government to the Concessionaire, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel of the Government or others who may enter the Rail System;
- (iii) the Concessionaire's general liability arising out of the Concession;
- (iv) liability to third parties for goods or property damage;
- (v) workmen's compensation insurance; and
- (vi) 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 (i) to (v) above.

32.2 Notice to the Government

Not later than 45 (forty five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Government, in reasonable detail, information in respect of the insurances that

it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Government may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Government, 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 Government.

32.4 Remedy for failure to insure

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

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 32 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, *inter alia*, the Government, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

32.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Government and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of

insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Rail System, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 33

ACCOUNTS AND AUDIT

33.1 Audited accounts

33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable Fare and other revenues derived/collected by it from or on account of the Rail System and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its 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 Government 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 Government for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

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

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Government, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of persons using the Rail System and liable for payment of Fare therefor, (b) Fare charged and received, Realisable Fare and other revenues derived from the Rail System, and (c) such other information as the Government may reasonably require.

33.2 Appointment of auditors

33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its 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 in Schedule-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

- 33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Government, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Government 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.
- 33.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the Government shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the “**Concurrent Auditors**”) from the Panel of Chartered Accountants to undertake concurrent audit of the Concessionaire’s accounts.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Government in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fare Statements under Clause 19.6.

33.4 Set-off

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

33.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Government by recourse to the Dispute Resolution Procedure.

Part V
Force Majeure and Termination

ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Rail System for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) 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 Government;

- (f) 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
- (g) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

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

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

34.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than

weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to collect Fare despite making best efforts or it is directed by the Government to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fare on account thereof; provided that in the event of partial collection of Fare where the daily collection is less than 90% (ninety per cent) of the Average Daily Fare, the Government shall extend the Concession Period in proportion to the loss of Fare on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fare as compared to the Average Daily Fare for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

34.7 Allocation of costs arising out of Force Majeure

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

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

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

of such excess amount shall be reimbursed by the Government 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 Government 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 Fare revenues or debt repayment obligations, and for determining such costs, information contained in the Financial Package may be relied upon to the extent that such information is relevant.

- 34.7.3 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Termination Payment for Force Majeure Event

- 34.9.1 If Termination is on account of a Non-Political Event, the Government shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 34.9.2 If Termination is on account of an Indirect Political Event, the Government shall make a Termination Payment to the Concessionaire in an amount equal to:
- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due;

- (b) 110% (one hundred and ten per cent) of the Adjusted Equity; and
- (c) an amount equivalent to the Additional Termination Payment less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in computation of the amount payable hereunder.

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

34.10 Dispute resolution

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

34.11 Excuse from performance of obligations

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

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

ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

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

35.2 Compensation for default by the Government

Subject to the provisions of Clause 35.6, in the event of the Government being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Fare revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

35.3 Extension of Concession Period

Subject to the provisions of Clause 35.6, in the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Fare, as the case may be, the Government shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fare remained suspended on account thereof, as the case may be; and in the event of reduction in collection of Fare where the daily collection is less than 90% (ninety per cent) of the Average Daily Fare, the Government shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fare on a daily basis. For the

avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fare as compared to the Average Daily Fare for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

35.4 Compensation for Competing Facility

35.4.1 Subject to the provisions of Clause 35.6, in the event that a Competing Facility is opened to traffic in breach of this Agreement, the Government shall pay to the Concessionaire, for each day of breach, compensation in a sum equal to the difference between the average daily Realisable Fare and the projected daily Fare (the “**Projected Fare**”) until the breach is cured. The Projected Fare hereunder shall be an amount equal to the Average Daily Fare, increased at the close of every month by 0.5% (zero point five per cent) thereof and revised in accordance with Clause 27.2. For the avoidance of doubt, the Average Daily Fare for the purposes of this Clause shall be the amount so determined in respect of the Accounting Year or period, as the case may be, occurring prior to such opening or operation of the Competing Facility. For the further avoidance of doubt, it is clarified that the average daily Realisable Fare, Average Daily Fare and Projected Fare for purposes of this Clause shall be computed in relation to Corridor-I, Corridor-II and/or Corridor-III, as the case may be.

35.4.2 Payment of compensation under this Clause 35.4 shall be deemed to cure the breach of this Agreement so long as the Government continues to pay compensation hereunder.

35.5 Compensation to be in addition

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

35.6 Mitigation of costs and damage

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

ARTICLE 36

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Government shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect Fare, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Government 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 Government shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

36.2 Government to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Government shall, on behalf of the Concessionaire, collect all Fare and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Government shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.

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

36.3 Revocation of Suspension

36.3.1 In the event that the Government 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 Government may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Government shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Government to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 36.4, the Government shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

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

ARTICLE 37

TERMINATION

37.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Rail System without the prior written consent of the Government;
- (e) Project Completion Date does not occur within the period specified in Clause 12.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;
- (h) the Concessionaire has failed to make any payment to the Government 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 Government to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Government, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

- (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
- (iii) each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading, or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Government any statement, notice or other document, in written or electronic form, which has a material effect on the Government's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Government.

37.1.2 Without prejudice to any other rights or remedies which the Government may have under this Agreement, upon occurrence of a Concessionaire Default, the Government shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Government shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 37.1.3.

37.1.3 The Government shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Government 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 Government 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 Government shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Government may deem appropriate.

37.2 Termination for Government Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Government 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 Government shall be deemed to be in default of this Agreement (the "**Government Default**") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Government 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 Government has failed to make any payment to the Concessionaire within the period specified in this Agreement; or
- (c) the Government repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of a Government 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 Government; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Government of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Government to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Government shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and
- (b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

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

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

37.3.2 Upon Termination on account of a Government Default, the Government shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due;
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and
- (c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

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

37.3.4 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire; provided that in the event any Project Assets, essential for the efficient, economic and safe operation of the Rail System, shall have been acquired and installed after the 20th (twentieth) anniversary of COD, with prior written consent of the Government which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty per cent) of the Adjusted Depreciated Value of such Project Assets shall, notwithstanding the provisions of Clause 37.4.1, be made by the Government to the Concessionaire.

37.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 37.3.4, in the event any Project Assets, essential for the efficient,

economic and safe operation of the Rail System, shall have been acquired and installed after the 20th (twentieth) anniversary of COD, with prior written consent of the Government which consent shall not be unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

37.3.6 The Concessionaire expressly agrees that Termination Payment under the Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

37.4 Certain limitations on Termination Payment

37.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be limited to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Government, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Government, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost.

37.4.2 Additional Termination Payment due and payable in respect of Real Estate Development forming part of Specified Assets shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Government, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and
- (c) 40% (forty percent) of the sum of Total Project Cost and Equity Support, if any.

37.4.3 Additional Termination Payment due and payable in respect of Specified Assets, not being assets forming part of Real Estate Development, which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but before the 20th (twentieth) anniversary thereof, shall be limited to the lowest of:

- (a) Adjusted Depreciated Value thereof;
- (b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Government, within 15 (fifteen) days of

Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

- (c) 20% (twenty percent) of the sum of Total Project Cost and Equity Support, if any.

37.5 Other rights and obligations of the Government

Upon Termination for any reason whatsoever, the Government shall:

- (a) be deemed to have taken possession and control of the Rail System 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 38.1; and
- (e) succeed upon election by the Government, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Government 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 Government 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 Government shall not in any manner be liable for such sums. It is further agreed that in the event the Government elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Government for this purpose shall be deducted from the Termination Payment.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.6, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

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

- (a) notify to the Government forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Rail System, 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 Rail System is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Rail System and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Rail System and shall be assigned to the Government free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Government may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Rail System, 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 Government, absolutely unto the Government 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 Rail System, free from all Encumbrances, absolutely unto the Government or to its nominee.

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

38.2 Inspection and cure

38.2.1 Not less than 48 (forty eight) months or no more than 60 (sixty) months prior to expiry of the Concession Period, the Concessionaire and the Independent Engineer shall conduct a joint inspection (initial inspection) of the Rail System and all Project Assets and the Concessionaire shall ensure that the Rail System shall be defect free as per the advice of Independent Engineer. Similarly another joint inspection (second inspection) of the Rail System and all the Project Assets shall be conducted between 24 months to 27 months prior to expiry of the Concession Period and the Concessionaire shall ensure that the Rail System and all Project Assets are in serviceable condition to the satisfaction of the Independent Engineer.

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

38.3 Cooperation and assistance on transfer of Project

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

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

Government, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.

38.3.3 The Government 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 38.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Rail System shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Government shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-U (the “**Vesting Certificate**”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Rail System, and their vesting in the Government 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 Government or its nominee on, or in respect of, the Rail System on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Divestment costs etc.

38.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Rail System in favour of the Government 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 Government.

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

ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Rail System 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 Rail System 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 Government in this behalf, the Government shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Rail System conform to the Maintenance Requirements. All costs incurred by the Government hereunder shall be reimbursed by the Concessionaire to the Government within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Government shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 39.2.3, a sum equal to 5% (five per cent) of the total Realisable Fare 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 39.1.

39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Rail System 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 Rail System is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 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.

39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Government a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the

period specified therein, substantially in the form set forth in Schedule-F (the “**Performance Guarantee**”), to be modified, *mutatis mutandis*, for this purpose, and the Government 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 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

Part VI
Other Provisions

ARTICLE 40

ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

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

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

40.2 Permitted assignment and charges

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

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Rail System;
- (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 Rail System, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Rail System;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

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

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

40.4 Assignment by the Government

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

ARTICLE 41

CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fare in any Accounting Year, the Concessionaire may so notify the Government and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

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

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1 crore (Rupees one crore) and 0.5% (zero point five percent) of the Realisable Fare in any Accounting Year, the Government may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Government, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Government may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Government; provided that if the Concessionaire shall dispute such claim of the Government, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

41.3 Protection of NPV

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

41.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

41.5 No claim in the event of recovery from Users

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

ARTICLE 42

LIABILITY AND INDEMNITY

42.1 General indemnity

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

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

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the Government and the Government Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

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

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Government Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Government 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 Rail System, 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 Government a licence, at no cost to the Government, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 42 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defence of claims

- 42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43

RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

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

43.2 Access rights of the Government and others

43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorised representatives of the Government, Senior Lenders, and the Independent Engineer, and for the persons duly authorised by any Government Instrumentality to inspect the Rail System and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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

43.3 Property taxes

All property taxes on the Site shall be payable by the Government as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Government.

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet 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 Rail System.

ARTICLE 44

DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 44.2.

44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. 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 Principal Secretary to Government, MA&UD Department and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 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 44.3.

44.3 Arbitration

44.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 44.2, shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 44.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be Hyderabad, and the language of arbitration proceedings shall be English.

- 44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.
- 44.3.3 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Government agree and undertake to carry out such Award without delay.
- 44.3.4 The Concessionaire and the Government agree that an Award may be enforced against the Concessionaire and/or the Government, as the case may be, and their respective assets wherever situated.
- 44.3.5 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.

44.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Government, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 45

DISCLOSURE

45.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s Registered Office and Stations. The Concessionaire shall prominently display at every Station, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

45.2 Disclosure of Documents relating to safety

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

45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, the Government shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clause 45.1 and 45.2, or portions thereof, the disclosure of which the Government is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 46

REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

- 46.1.1 The Concessionaire shall maintain a public relations office at every Station where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at every Station so as to bring it to the attention of all Users.
- 46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.
- 46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Government may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

- 46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.
- 46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Government and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Government may, in its discretion, advise the Concessionaire to take such further action as the Government may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Government of its decision thereon, and if the Government is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 47

MISCELLANEOUS

47.1 Governing law and jurisdiction

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

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

47.3 Depreciation and interest

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

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

47.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

47.5 Waiver

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

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

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

47.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Government 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 Rail System nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Government shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

47.7 Exclusion of implied warranties etc.

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

47.8 Survival**47.8.1 Termination shall:**

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

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

47.9 Entire Agreement

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

47.10 Severability

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

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

47.11 No partnership

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

47.12 Third parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

47.13 Successors and assigns

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

47.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Government; provided that notices or other communications to be given to an address outside Hyderabad 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 Government;
- (b) in the case of the Government, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Principal Secretary to Government, MA&UD Department with a copy delivered to the Government Representative or such other person as the Government may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Hyderabad it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

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

47.15 Language

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

47.16 Counterparts

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

ARTICLE 48

DEFINITIONS

48.1 Definitions

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

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

“**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 37.4.2 and 37.4.3, 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% based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

“**Adjusted Equity**” means the Equity funded in Indian Rupees and adjusted on the first day of the current month (the “**Reference Date**”), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.15% (zero point one

five per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

“**Affected Party**” shall have the meaning set forth in Clause 34.1;

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

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

“**Applicable Laws**” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and 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 Rail System during the subsistence of this Agreement;

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

“**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. (Rs. one hundred crore) each in value;

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

“**Associate**” or “**Affiliate**” means, in relation to either Party and/or the Selected Bidder, a person who controls, is controlled by, or is under the common control with such Party or the Selected Bidder (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);

“**Average Daily Fare**” means the amount arrived at by dividing the total Realisable Fare of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the result thereof by 5% (five per cent); provided that the Average Daily Fare for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fare collected every day during the period between COD and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fare payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fare for such period;

“**Average PHPDT**” means the number arrived at after dividing the total PHPDT of the immediately preceding Accounting Year by 365 (three hundred and sixty five);

“**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 in response to the Request for Proposals in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the Selected Bidder to the Government along with the Bid in a sum of Rs. 240 crore (Rupees two hundred and forty crore), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“**COD**” or “**Commercial Operation Date**” shall have the meaning set forth in Clause 15.1;

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

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

- (b) the repeal, modification or re-enactment of any existing Indian law ;
- (c) the commencement of any Indian law which has not entered into effect until the date of Bid;
- (d) a change in the interpretation or application of any Indian law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the Selected Bidder, together with its Associates in the total Equity to decline below (i) 51% (fifty one per cent) thereof till the 2nd (second) anniversary of the COD of the Project, (ii) 33% (thirty three per cent) thereof till the 3rd (third) anniversary of the COD of the Project, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Government during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire/Select Bidder during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of the Selected Bidder to the total Equity, if it occurs prior to COD of the Project, shall constitute Change in Ownership;

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

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

“Competing Facility” shall have the meaning set forth in Clause 30.1.1,

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

“Concession” shall have the meaning set forth in Clause 3.1.1;

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

“Concession Fee” shall have the meaning set forth in Clause 26.1;

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

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

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

“**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 Rail System in accordance with this Agreement and includes tracks, signaling systems and communication systems;

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

“**Corridor-I**”, “**Corridor-II**” and “**Corridor-III**” shall have the respective meanings assigned to them in Clause 4.1.2 (b);

“**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 Government or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Government or the Independent Engineer to accord their approval;

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

“**Damages**” shall have the meaning set forth in Sub-clause (x) of Clause 1.2.1;

“**Debt Due**” means the aggregate of the following sums expressed in Indian Rupees outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”)

but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;

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

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

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

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

“**Dispute**” shall have the meaning set forth in Clause 44.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 44;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 38.1;

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

“**Drawings**” means all of the drawings, calculations and documents pertaining to the Rail System as set forth in Schedule-H, and shall include ‘as built’ drawings of the Rail System;

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

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

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

“**Encumbrances**” means, in relation to the Rail System and Real 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 Rail System, where applicable herein but excluding utilities referred to in Clause 11.1;

“**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, but does not include Equity Support;

“**Equity Support**” shall have the meaning set forth in Clause 25.2.1;

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

“**Escrow Agreement**” shall have the meaning set forth in Clause 31.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 31.1.1;

“**Escrow Default**” shall have the meaning set forth in Schedule-S;

“**Fare**” means the charge(s) levied on and payable by a person for use of the Rail System in accordance with the provisions of The Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act, 2008 and provisions of the Fare Notification;

“**Fare Notification**” means the Notification issued by the Government, substantially in the form set forth at Schedule-R, in exercise of the powers conferred by Section 81 of The Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act, 2008 for levy and collection of Fare during the Concession Period,

and includes any subsequent notifications issued from time to time for levy and collection of the Fare contemplated by the provisions of this Agreement;

“**Fare Contract**” means the contract, if any, entered into by the Concessionaire with a Contractor for collection of Fare for and on behalf of the Concessionaire and matters incidental thereto;

“**Fare Contractor**” means the person, if any, with whom the Concessionaire has entered into a Fare Contract;

“**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 set forth in Schedule-V;

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

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

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

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

“**GOI**” means the Government of India;

“**Good Industry Practice**” means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in

accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

“**Government**” means the Government of Andhra Pradesh;

“**Government Default**” shall have the meaning set forth in Clause 37.2.1;

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

“**Government Representative**” means such person or persons as may be authorised in writing by the Government to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Government under this Agreement;

“**Grant**” shall have the meaning set forth in Clause 25.1.1;

“**Golden Share**” shall have the meaning set forth in Clause 5.4.1;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 42;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 42;

“**Independent Engineer**” shall have the meaning set forth in Clause 23.1;

“**Indirect Political Event**” shall have the meaning set forth in Clause 34.3;

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

“**Intellectual Property**” means all patents, trade marks, 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 set forth in Clause 21.1;

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

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

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3;

“**Maintenance Programme**” shall have the meaning ascribed to it in Clause 17.4.1;

“**Maintenance Requirements**” shall have the meaning set forth in Clause 17.2;

“**Material Adverse Effect**” means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

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

“**Non-Political Event**” shall have the meaning set forth in Clause 34.2;

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

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

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

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by the 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, Fare Contract or any other contract in connection with or incidental to O&M, and (g) all

other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

“**O&M Inspection Report**” shall have the meaning set forth in Clause 19.3;

“**O&M Support**” shall have the meaning set forth in Clause 25.3.1;

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

“**PKM**” or ‘**Passenger Kilometres**’ means the cumulative distance travelled by Users of the Rail System in a day;

“**PHPDT**” or “**Peak Hour Peak Direction Traffic**” means the maximum number of Users commuting through the entire length of the busiest section of a line consisting of 5(five) successive Stations on the Rail System during a Peak Hour in the direction which is carrying a higher volume of traffic;

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 33.2.1;

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

“**Passenger Charter**” shall have the meaning set forth in Clause 21.8;

“**Peak Hour**” means an hour when the number of Users commuting on the Rail System is the highest during the course of a day;

“**Performance Security**” shall have the meaning set forth in Clause 9.1;

“**Political Event**” shall have the meaning set forth in Clause 34.4;

“**Project**” means the construction, operation and maintenance of the Rail System in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Fare Contract, all agreements relating to Real Estate Development and any other agreements or material 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.5(five) crore;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including:

- (a) rights over the Site in the form of licence, Right of Way or otherwise;

- (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, interchanges, bridges, drainage works, rolling stock, electrical systems, communication systems, fare collection systems, rest areas, relief centres, maintenance depots, administrative offices and Stations;
- (c) Project Facilities situated on the Site;
- (d) buildings and immovable fixtures or structures forming part of Real 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 Rail System,

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

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

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

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

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

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

“Rail System” means the municipal tramway in Hyderabad comprising the mass rapid transit system built, or to be built, and operated on the Site and includes civil, mechanical and electrical works, rolling stock, rail tracks, signalling and telecommunication equipment, and all other Project Assets necessary for and associated with operation of trains on the Site, and shall include Real Estate Development;

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

“Real Estate Development” shall have the meaning set forth in Clause 3.1.3;

“**Realisable Fare**” means all the Fare due and realisable under this Agreement, but does not include Fare that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fare shall, save as provided in Clause 26.4, be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

“**Reference Exchange Rate**” means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by the State Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital ‘C’;

“**Request for Qualification**” or “**RFQ**” shall have the meaning set forth in Recital ‘B’;

“**Revenue Shortfall Loan**” shall have the meaning set forth in Clause 28.1.1;

“**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 Rail System and Real Estate Development in accordance with this Agreement;

“**Safety Commissioner**” shall have the meaning set forth in Clause 18.3;

“**Safety Consultant**” shall have the meaning set forth in Clause 18.1.2;

“**Safety Requirements**” shall have the meaning set forth in Clause 18.1.1;

“**Safety Fund**” shall have the meaning set forth in Clause 18.2;

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.4.1;

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

“**Selected Bidder**” shall have the meaning set forth in Recital (B);

“**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;

“**Shareholders Agreement**” shall have the meaning set forth in Clause 5.4.1;

“**Site**” shall have the meaning set forth in Clause 10.1;

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

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

- (a) all buildings and immovable fixtures or structures forming part of Real Estate Development; and
- (b) such of the Project Assets which are constructed, acquired or installed after the 5th (fifth) anniversary of COD, but before the 20th (twentieth) anniversary thereof;

but shall in no case include land;

“**State**” means the State of Andhra Pradesh and “**State Government**” means the government of that State;

“**Station**” means a place in the Rail System where Trains stop for the purposes of transporting passengers or goods;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such

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

“**Subsistence Revenue**” means the total amount of Fare revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost plus Grant, during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Government under clause 34.7.2 or 35.2;

“**Substitution Agreement**” shall have the meaning set forth in Clause 40.3;

“**Suspension**” shall have the meaning set forth in Clause 36.1;

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

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

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

“**Termination Payment**” means the amount payable, under and in accordance with this Agreement, by the Government to the Concessionaire upon Termination, and includes Additional Termination Payment. For the avoidance of doubt, it is expressly agreed that the amount payable shall be subject to the limitations specified in Clause 37.4;

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

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

- (a) the capital cost of the Project, less Equity Support as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Rail System less Equity Support; and
- (c) a sum of Rs.12,132 crore (Rupees twelve thousand one hundred and thirty two crore), less Equity Support;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost. For the avoidance of doubt, it is agreed that Total Project Cost shall not include the cost of Specified Assets.

“**Traction System**” means the system which provides electric power for movement of Trains;

“**Train**” means a series of railway coaches that is hauled as a single unit by a locomotive or by integral motors for transporting Users on the Rail System and includes a single coach;

“**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;

“**UDD**” or “**Urban Development Department**” means the Urban Development Department of the State Government or any substitute thereof dealing with urban transport and “**Secretary, UD**” means the Secretary to the State Government in that Department;

“**User**” means a person who uses or intends to use the Rail System or any part thereof on payment of Fare or in accordance with the provisions of this Agreement and Applicable Laws;

“**Vesting Certificate**” shall have the meaning set forth in Clause 38.4; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of Fare in accordance with the provisions of Clause 27.2.1, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

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

THE COMMON SEAL OF L&T Hyderabad Metro Rail Private Limited has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the 1st day of September, 2010 hereunto affixed in the presence of Mr. V.B.Gadgil, Chief Executive & Managing Director, who has signed these presents in token thereof and Mr. K.Venkatesh, Director who has countersigned the same in token thereof:

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE GOVERNMENT OF ANDHRA
PRADESH by:

SIGNED, SEALED AND DELIVERED
For and on behalf of
L&T Hyderabad Metro Rail Private Limited
(Concessionaire) by:

(Signature)

Mr. T.S.Appa Rao, IAS.,
Principal Secretary to Govt.,
Municipal Administration & Urban
Development Department, Government of
Andhra Pradesh, Secretariat,
Hyderabad -500 022,
Andhra Pradesh.

(Signature)

Mr. V.B.Gadgil,
Chief Executive & Managing Director,
L&T Hyderabad Metro Rail Private Ltd.
1-Q4-A1, Cyber Towers, Hitec City,
Madhapur, Hyderabad-500 081.

In the presence of:

Signature

1. Mr. K.E.S.C. Prasad
General Manager (F&CA)
Hyderabad Metro Rail Ltd.
Metro Rail Bhavan, Saifabad,
Hyderabad -500004.

2. Mr. K.Venkatesh,
Director
L&T Hyderabad Metro Rail Private Ltd.
1-Q4-A1, Cyber Towers, Hitec City,
Madhapur, Hyderabad-500 081.

Schedules

SCHEDULE – A

(See Clause 10.1)

SITE OF THE PROJECT

1 The Site

- 1.1 Site of the Rail System shall include the land, buildings, structures and road works as described in Annex-I of this Schedule A.
- 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 Government Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.
- 1.3 Additional land required for car depots, piers, electric sub-stations, ancillary buildings or for construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Government.

2 Real Estate Development

The land earmarked for Real Estate Development has been described in Annex-II of this Schedule-A, and such land shall form part of the Site.

Annex - I
(Schedule-A)

Site for the Rail System

1. Project Overview

- 1.1 The Hyderabad Metro Rail System will have a length of approximately 71.16 kilometres consisting of three Corridors, namely Miyapur- L.B.Nagar (28.87 kms) (referred to as “**Corridor-I**”), Jubilee Bus Station – Falaknuma (14.78 kms) (referred to as “**Corridor-II**”) and Nagole – Shilparamam (27.51 kms) (referred to as “**Corridor-III**”). There will be three depots, one for each Corridor, located at Miyapur, Falaknuma and Nagole.
- 1.2 A schematic layout of the Rail System is set out as **Drawing 1** appended to this Annex-I of Schedule-A.

2. Corridor-I: Miyapur – L.B.Nagar

- 2.1 The Miyapur-L.B.Nagar Corridor will have a length of 28.87 kms and will be served by 27 Stations and a depot at Miyapur (hereinafter referred to as “Depot-I”)
- 2.2 This Corridor starts from Miyapur on NH-9. The Miyapur Station will be in an ‘off road’ location with a connection to Depot-I further north.
- 2.3 The alignment proceeds from Miyapur and continues on NH-9 towards south and passes through JNTU College, KPHB Colony and Kukatpally. The alignment further passes through the Balanagar industrial area and reaches Bharat Nagar flyover and moves on the west side of this flyover to provide integration with MMTS Station at Bharat Nagar. Thereafter, the alignment returns to the central median of NH9 and continues towards Khairatabad via Erragadda, ESI hospital, S.R.Nagar, Ameerpet, Panjagutta and Irrum manzil. At Ameerpet Junction, Corridor-I will cross above Corridor-III, where an interchange Station is proposed. At Panjagutta, Corridor-I is double elevated to cross over the existing flyover.
- 2.4 At Khairatabad, integration with MMTS is to be provided. The alignment will move further to Assembly via Lakdi-ka-pul from Nirankari Bhavan side with a station at Lakdi-ka-pul. Another Station is at the Legislative Assembly which will serve the Assembly, Public Gardens and the Stadium nearby. From here, Corridor-I will pass via Nampally Station, Gandhi Bhavan and MJ Market to reach Osmania Medical College. Proceeding further, the line will cross above Corridor-II at M.G Bus Station, where an interchange Station is to be provided. The alignment passes via M.G Bus Station (Asia’s biggest bus station) and reaches Malakpet, where integration with MMTS will have to be provided. At Malakpet and Nalgonda cross Road, Corridor-I

will be double elevated to cross over the existing Railway line and the flyover respectively.

- 2.5 From Malakpet the alignment will pass through New Market, Musarambagh, Dilsukhnagar Bus Station, Chaitanyapuri, and Victoria Memorial before reaching the terminal Station at L.B Nagar. Stations will be at New Market, Musarambagh, Dilsukhnagar, Chaitanyapuri, Victoria Memorial and the terminal Station will be at L.B.Nagar.

3 Corridor-II: Jubilee Bus Station (JBS) – Falaknuma

- 3.1 Corridor-II will have a length of 14.78 kms and will be served by 16 Stations and a small depot at Falaknuma (hereinafter referred to as “Depot-II”).
- 3.2 This Corridor will start from Jubilee Bus Station in Secunderabad, cross over Corridor-III at Parade Grounds, where an interchange Station is proposed. Similarly, integration is to be provided with Secunderabad Railway station of South Central Railway at the next Station. Proceeding further, the alignment will cross the platforms of Secunderabad Railway station and Boiguda Junction to reach the newly constructed Gandhi Hospital, where a Station is to be provided. The alignment will continue via Musherabad, R.T.C cross roads, and Chikkadpally road, pass Narayanaguda drain by the side of the road bridge and cross Narayanaguda flyover as double elevated.
- 3.3 The alignment will cross the Kachiguda cross road (road to Kachiguda railway Station) and will pass through Badichowdi, Sultan bazaar, Koti, M.G.Bus Station, to cross below Corridor-I at that point and will reach Darulshifa . A link is to be provided for rake interchange between Corridors-I & II at this interchange Station. After Gandhi Hospital, Stations will be located at Musheerabad, R.T.C cross Roads, Chikkadpally, Narayanaguda, Sultan Bazar and MGBS.
- 3.4 The alignment will continue through Puranihaveli road off Salarjung Museum road with Stations about 500 metres away from Salarjung Museum & Charminar and will turn to Shalibanda road. It will continue on Shalibanda road with a Station at Shalibanda. Further, on reaching Falaknuma road, the Corridor takes left turn and passes via Shamshergunj and Jangammet Stations before reaching the terminal Station at Falaknuma.

4 Corridor-III: Nagole - Shilparamam

- 4.1 Corridor-III will have a length of 27.51 kms and will be served by 23 Stations and a depot at Nagole (hereinafter referred to as “Depot-III”).
- 4.2 This Corridor will start from Nagole, where Depot-III will be located, and will pass through Uppal and NGRI which has important areas like Survey of India, Little Flower Jr. College and Kendriya Vidyalaya School, before reaching Habsiguda. From

Habsiguda the line will pass in front of IICT and run along the center line of the road up to Mettuguda except at Tarnaka fly over, where the alignment will negotiate the flyover on south side. From Mettuguda junction, the line will pass over the railway lines and cross the Oliphanta Bridge, as double elevated. The alignment will run on to Sardar Patel road (taking a turn at ISKON Temple) and further on Begumpet road up to Green Lands junction, negotiating the existing flyovers and other obligatory points en-route and integrating with Corridor-II as a combined multilevel Station at Parade Grounds.

- 4.3 From the Green lands junction, the alignment will turn right and cross the existing Green lands flyover with double elevation to run upto Ameerpet junction. Here it will turn right on to Kukatpally road and run parallel to Corridor-I for about 100 metres, facilitating provision of a combined multilevel Station with operational link. Further, taking left turn at Saradhi Studio, the alignment will run through Madhuranagar, Yousufguda check post, Road No.5 and Road No.1 of Jubilee Hills. From there, the alignment will take right turn at Jubilee Hills Check post and will enter Road No.36 of Jubilee Hills and further run along the central median up to Shilparamam and will reach the terminal Station of the Corridor, after crossing the proposed flyover/underpass at Hitec city junction.

5 Passenger Stations

- 5.1 Since Stations will have to be built over the existing roads of the city, which cannot be widened beyond a point due to presence of existing buildings, based on the road widths and scope for road widening, they will have to be built as per the following categories:

- (i) Category-I : 12 Stations of 20M x 135M size (approximate)
- (ii) Category-II : 40 Stations of 30M x 135M size (approximate)
- (iii) Category-III : 14 Stations of more than 30M x 135M size (approximate)

The tables set out at paragraphs 5.2, 5.3 and 5.4 below indicate the category of Stations that shall be built at each location along Corridors-I, II and III respectively.

5.2 Corridor-I – Miyapur – L.B.Nagar

Sl. No.	Name of the Station	Indicative Chainage (in Kilometres)	Category
1	Miyapur	0.000	III
2	JNTU College	1.450	III
3	KPHB Colony	2.770	III

Sl. No.	Name of the Station	Indicative Chainage (in Kilometres)	Category
4	Kukatpally	4.310	II
5	Balanagar	5.800	II
6	Moosapet	6.520	II
7	Bharat Nagar	7.600	II
8	Erragadda	8.380	II
9	ESI Hospital	9.320	III
10	S.R.Nagar	10.360	III
11	Ameerpet	11.350	III
12	Punjagutta	12.310	II
13	Irrum Manzil	13.060	II
14	Khairatabad	14.120	II
15	Lakdi-ka-pul	14.967	II
16	Assembly	15.790	II
17	Nampally	16.850	I
18	Gandhi Bhavan	17.640	II
19	Osmania Medical College	18.720	II
20	MG Bus Station	19.340	II
21	Malakpet	20.220	II
22	New Market	21.310	II
23	Musarambagh	22.290	II
24	Dilsukhnagar	23.750	III
25	Chaitanyapuri	24.450	III
26	Victoria Memorial	25.480	III
27	L.B.Nagar	28.060	III

5.3 Corridor-II – Jubilee Bus Station – Falaknuma

Sl. No	Station	Indicative Chainage (in Kilometres)	Category
1	Jubilee Bus Station	0.000	II
2	Parade Grounds	0.700	II
3	Secunderabad	1.700	II
4	Gandhi Hospital	2.946	II
5	Musheerabad	3.587	I
6	R.T.C. Cross Roads	4.917	II
7	Chikkadpally	5.570	I
8	Narayanaguda	6.580	I
9	Sultan Bazar	7.359	I
10	MG Bus Station	8.185	II
11	Salarjung Museum	9.575	I
12	Charminar	11.115	I
13	Shalibanda	11.832	I
14	Shamshergunj	12.783	I
15	Jangammet	13.709	I
16	Falaknuma	14.183	II

5.4 Corridor-III – Nagole - Shilparamam

Sl No	Station	Indicative Chainage (in Kilometres)	Category
1	Nagole	(-) 4.533	III
2	Uppal	(-) 2.895	III
3	NGRI	(-) 1.715	III
4	Habsiguda	0.177	III
5	Tarnaka	1.044	II
6	Lalaguda	1.927	II
7	Mettuguda	2.500	II
8	Secunderabad	4.252	II
9	Parade Grounds	5.925	II
10	Paradise	6.908	II
11	Rasool Pura	8.173	II
12	Prakash Nagar	9.284	II
13	Begumpet	10.669	II
14	Ameerpet	12.314	II
15	Madhura Nagar	12.997	II
16	Yusuf Guda	14.040	I
17	Road No. 5 Jubilee Hills	15.238	I
18	Jubilee Hills Check Post	16.042	II
19	Pedamma Temple	17.129	II
20	Madhapur	18.318	II
21	COD	19.892	II
22	Hitec City	20.749	II
23	Shilparamam	22.329	II

6 Interchange Stations with other systems

6.1 Interchange Stations on the Rail System shall be built at the locations specified below:

Sl. No	Name of the Corridor	Name of the Station	Interchange with
1	Miyapur to L.B.Nagar	Miyapur	Miyapur Bus Station
2		Bharat Nagar	Bharat Nagar MMTS Station
3		Ameerpet	Corridor-III
4		Khairtabad	Khairtabad MMTS Station
5		Osmania Medical College	Koti Bus Station
6		M.G.Bus Station	Corridor-II and M.G. Bus Station (APSRTC)
7		Malakpet	Malakpet MMTS Station
8		Dilsukhnagar	Dilsukhnagar Bus Station
9	Jubilee Bus Station to Falaknuma	Jubilee Bus Station	APSRTC Jubilee Bus Station
10		Parade grounds	Corridor-III
11		Secunderabad	Secunderabad Railway Station
12		Sultan Bazar	Koti Bus Station
13		M.G.Bus Station	Corridor-I and M.G. Bus Station (APSRTC)
14		Falaknuma	Falaknuma Bus Station
15	Nagole to Shilparamam	Uppal	Uppal Bus Station
16		Secunderabad	Secunderabad Railway Station and Rethifile Bus Station
17		Parade Grounds	Corridor-II
18		Begumpet	MMTS Station Begumpet
19		Ameerpet	Corridor-I

- 6.2 Inter modal Integration facilities such as skywalks, underpasses, bus bays and bus shelters shall be developed to provide “seamless travel” facility for the commuters.
- 6.3 Certain stations of Indian Railways like Secunderabad, Nampally and Begumpet are expected to undergo major changes as a part of the expansion plan of Indian Railways. Secunderabad railway station is being developed as a world class railway station. The facilities being provided at the Metro Rail Stations shall be dovetailed to the plans of Indian Railways for each respective station.

7 Interconnections between Corridors

The Stations specified below shall provide interconnections between the respective Corridors indicated hereunder:

Sl. No	Name of the Station	Inter connection between
1.	Ameerpet	Corridor-I and Corridor-III
2.	M.G. Bus Station	Corridor-I and Corridor-II
3.	Parade Grounds	Corridor-III and Corridor-II

8 Depots

There will be 3 (three) Depots for the Rail System (the “**Depots**”), one for each Corridor. Depot-I shall be located at Miyapur and shall have 99 (ninety nine) acres of land. Depot-I shall function as the main Depot for the entire Rail System. Depot-II shall be located at Falaknuma and shall have 17 (seventeen) acres of land. Depot-III shall be located at Nagole and shall have 96 (ninety six) acres of land. Depot-I or Depot-III shall function as the main depot for the entire Rail System.

Schematic representations of the lands for Depot-I, Depot-II and Depot-III are set out at drawings 2, 3 and 4 in Annex-II of this Schedule-A.

Annex-II
(Schedule-A)
(See Clause 3.1.3)

Site for Real Estate Development

1. Real Estate Development may be undertaken by the Concessionaire at and above the first floor level of all Depots and above the parking and circulation areas of select Category-I, Category-II and Category-III Stations in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

2. Depots

Real Estate Development on the land at each of the Depots may be undertaken, subject to the condition that at least 70% (seventy per cent) of the ground floor area at Depot-I (Miyapur) and Depot-III (Nagole) and 80% (eighty per cent) of the ground floor area at Depot-II (Falaknuma) shall be earmarked for maintenance and stabling of the Trains and other Depot facilities. The Concessionaire may undertake Real Estate Development on the floors above the ground floor, on the remaining area on the ground floor and the basement in accordance with the terms of this Agreement. The land available at each of the Depots, together with a brief description of the land, is set out below.

Sl. No	Location	Description	Available land (in Acres)	Reference to Drawing
1	Miyapur	Open land	99	2
2	Falaknuma	Open land	17	3
3	Nagole	Open land	96	4
			212	

3. Stations

- 3.1 20% of the floor area of each Station building may be utilised for Real Estate Development, in accordance with the provisions of this Agreement. For the avoidance of doubt, it is clarified that the area utilised for provision of tracks shall not be considered for computing the floor area for the purposes of this paragraph 3.1.
- 3.2 In addition to the area specified in paragraph 3.1 above, the Concessionaire may, at or near select Category-I, Category-II and Category-III Stations, undertake Real Estate

Development over the parking and circulation areas. The approximate parking and circulation area at each such Station is indicated below:

Sl. No	Location	Description of Location	Available land (in Acres) [£]	Reference to Drawing
1	Irrum manzil	Open space in front of R&B Office	1	5
2	Ameerpet	Chalees Makaan	1.25	6
3	Punjagutta	Govt. Quarters Srinagar Colony Road	3	7
4	Nampally	MRO Office & School	1	8
5	Osmania Medical College	Koti Women's College rear (south) side open land	1	9
6	Malakpet	GHMC Parking Lot adjacent to CTO/ Jail Garden	0.75	10
7	Dilsukh Nagar	Bus Depot	1	11
8	Jubilee Bus Station	Secunderabad Club Corner Land	1	12
9	Parade grounds	GHMC old Secunderabad Division office	1	13
10	Narayanaguda	Police Qrts.	1	14
11	Sultan Bazaar	Koti Women's College front (west) open land	1	15
12	Secunderabad	Police Qrts./ P.S. Building near Keys High School	1	16
13	Shilparamam	Open Land near Shilparamam	2	17
14	Miyapur	Miyapur Open land (Terminal Station)	5	18
15	Balanagar	HUDA Truck Terminal	2	19
16	ESI Hospital	Mental Hospital Land	3	20

Sl. No	Location	Description of Location	Available land (in Acres) [£]	Reference to Drawing
17	Irrum Manzil	Irrum Manzil Govt. Qrts	3	21
18	Musarambagh	Govt. Qrts, Malakpet	4	22
19	L.B Nagar	Open Space before Indoor Stadium	1.5	23
20	Falaknuma	Falaknuma Open Land (Terminal Station)	4	24
21	Habsiguda	Osmania University next to State Archives	8	25
22	Tarnaka	Osmania University Land	2.5	26
23	Hitec city	NIFT Open Land & ATDC Open Land	2	27
24	Nagole	Nagole Terminal Station	4	28
25	Paradise	P.G. College	2	29
		Total	57	

[£] The areas set out hereinabove for parking and circulation are approximate and may vary marginally. However, the Government shall ensure that the total area available for Real Estate Development remains the same.

In the event that any of the lands earmarked for parking and circulation (and consequently for Real Estate Development) is not made available to the Concessionaire, the Government shall earmark alternative sites of comparable size and potential for Real Estate Development.

- 3.3 Schematic representations of land available at select Category-I, Category-II and Category-III Stations for parking and circulation areas are provided as drawings 5 to 29 in this Annex-II of Schedule-A.

SCHEDULE – B

(See Clause 2.1)

DEVELOPMENT OF THE RAIL SYSTEM**1 Development of the Rail System**

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

2 Rail System

2.1 Rail System shall include construction of the Rail System as described in Annex-I of this Schedule-B and Annex-I of Schedule-C.

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

3. Real Estate Development

3.1 Real Estate Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-II of this Schedule-B.

3.2 Real Estate Development shall be undertaken and completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule-D.

Annex - I
(Schedule-B)

Description of Rail System

1. Length of the Rail System

- 1.1 The Rail System shall consist of three Corridors. The three Corridors will be 71.16 Km in length.
- 1.2 The Rail System shall be designed to a capacity of 50,000 PHPDT each for Corridors I & III and 35,000 PHPDT for Corridor II.
- 1.3 The Rail System shall be constructed as elevated for the entire length outside the Depots and 'at grade' within the Depot area. A brief description of the route alignment of each of the three Corridors is set out in Annex-I of Schedule-A.

The Rail System shall be constructed as an elevated medium heavy rail transit system with 66 (sixty six) Stations. The horizontal alignment will be generally located along the centre line of the existing roads. However, there are several flyovers and other elevated structures on these three Corridors and the rail alignment will have to negotiate these flyovers and elevated structures by going either on the left side or on the right side, wherever they are running parallel to the alignment. Where the alignment has to cross over the flyovers or any other elevated structures, it will have to be done at double elevation and as per the vertical clearance requirements of the authorities concerned.

2. Corridors

- 2.1 Corridor-I: Miyapur - L.B Nagar: This Corridor will have a length of 28.87 kms and will be served by 27 Stations and a Depot at Miyapur. The Corridor shall be designed for a capacity of 50,000 PHPDT.
- 2.2 Corridor-II: Jubilee Bus Station (JBS) - Falaknuma: This Corridor will have a length of 14.78 kms and shall be served by 16 Stations and a small Depot at Falaknuma. The Corridor shall be designed for a capacity of 35,000 PHPDT.
- 2.3 Corridor-III: Nagole- Shilparamam: This Corridor will have a length of 27.51 kms and will be served by 23 Stations and a Depot at Nagole. The Corridor shall be designed for a capacity of 50,000 PHPDT.
- 2.4 All the three Corridors pass through highly congested and busy traffic routes in Hyderabad city, with very high vehicular and pedestrian movement. A brief overview of the Corridors and the chainage details of the Station locations are at Annex-I of Schedule-A of this Concession Agreement.

3. Mechanical and Electrical Equipment

The Mechanical and Electrical (M&E) equipment to be integrated into the Rail System shall include:

- (a) Rolling Stock – EMUs powered through a 750 Vdc Third Rail System or any other traction system approved by the Government;
- (b) Signaling System for safe operation of Rail System;
- (c) Communication System to enable effective operation of the Rail System;
- (d) Automatic Fare Collection System;
- (e) Power Supply System;
- (f) Elevators, Escalators and Lifts;
- (g) Air-conditioning in the enclosed and covered parts of the Stations and in Trains;
- (h) Lighting in Stations and Trains;
- (i) System-wide Graphics and Signage;
- (j) Operation Control Center Equipment;
- (k) Maintenance Equipment for maintenance of all equipment and subsystems of Rail system;
- (l) Inspection Cars, Ultrasonic Rail Detection Cars, Track Recording Cars and Oscillograph Cars;
- (m) Maintenance and Renewal Cars suitable and required for the type of track provided;
- (n) Accident Restoration Units including Retaining Ramps, Accident Relief Medical Vans, and Diesel Engine for salvaging immobilised Cars/Trains;
- (o) Traction Sub Station (TSS) at alternate Metro Rail stations or as per the requirement;
- (p) One Receiving Sub Station (RSS) 132/33 Kv in each Depot;
- (q) Auxiliary Sub Station in every Metro Rail Station to feed station utilities;
- (r) OCC under SCADA system;
- (s) A stand by DG set shall be provided to offset power failure; and

(t) Two 132/33 Kv (RSS) standby.

4 Project Facilities

Project Facilities shall be constructed in conformity with Annex-I of Schedule-C.

5 Specifications and Standards

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

Annex - II
(Schedule-B)
(See Clause 3.1.3)

Description of Real Estate Development

1. Scope of Real Estate

- 1.1 Subject to the other terms and conditions set out in this Concession Agreement, the Concessionaire is entitled to undertake Real Estate Development over the parking and circulation areas specified in Annex-II of Schedule-A, at or near Category-I, Category-II and Category-III Stations; provided that the cumulative permissible built up area at all the Category-I, Category-II and Category-III Stations shall be restricted to 0.557 (zero point five five seven) million sq.mt. In addition, the Concessionaire shall not use more than 20% (twenty per cent) of the floor area of each Station (excluding any area forming part of, or constructed over, the parking and circulation areas) for shops and/or kiosks and paid services needed for commuters.
- 1.2 The Concessionaire is also entitled to undertake Real Estate Development at the Miyapur, Nagole and Falaknuma Depots; provided that the cumulative permissible built up area to be utilised for Real Estate Development at the three Depots shall be restricted to a maximum of 1.161 (one point one six one) million sq.mt., excluding the basement. For the avoidance of doubt, it is clarified that at least 70% (seventy per cent) of the ground floor area at the Miyapur and Nagole Depots and at least 80% (eighty per cent) of the ground floor area at Falaknuma Depot shall not be utilised for Real Estate Development and shall be set apart for maintenance and stabling of Trains. It is further clarified that the basement may be used for Real Estate Development and its area shall be in addition to the aforesaid 1.161 (one point one six one) million square metres.
- 1.3 The details of 25 (twenty five) Stations and 3 (three) Depots and the land available at each such Station and Depot wherein Real Estate Development is permitted, are set out at Annex-II of Schedule-A.

2. Land use

- 2.1 The Concessionaire may undertake Real Estate Development on all lands identified as Depot land or parking and circulation areas at or near Stations. For the avoidance of doubt, Real Estate Development includes commercial and mixed use of the land and buildings.

3. Development Controls

- 3.1 Subject to the provisions of the Concession Agreement, the Concessionaire shall undertake Real Estate Development in compliance with all Applicable Laws, including local bye-laws, applicable building bye-laws and provisions of National

Building Code, including without limitation, the following government orders, published in the Gazette:

1. G.O.Ms.No. 86 MA, dated 03-03-2006
2. G.O.Ms.No.171 MA, dated 19-04-2006
3. G.O.Ms.No. 623 MA, dated 01-12-2006
4. G.O.Ms.No. 17MA, dated 10-01-2007.

4. Height restrictions

- 4.1 The height restrictions in relation to the Real Estate Development at all Depots and Stations shall be as prescribed by Applicable Laws.

5. Real Estate Development at Depots

- 5.1 Real Estate Development may be undertaken over the entire area of a Depot; provided that at least 70% (seventy per cent) of the ground floor area at Depot-I (Miyapur) and Depot-III (Nagole) and 80% (eighty per cent) of the ground floor area at Depot-II (Falaknuma) shall be earmarked for maintenance and stabling of the Trains and other Depot facilities. The Concessionaire may undertake Real Estate Development on the floors above the ground floor, on the remaining area on the ground floor and the basement in accordance with the terms of this Agreement.

6. Real Estate Development at Stations

- 6.1 Real Estate Development may be undertaken over the parking and circulation areas at or near each Category-I, Category-II and Category-III Station, subject to restrictions specified in paragraph 4 and paragraph 1.1 above.
- 6.2 The entire ground floor area at or near a Station shall be utilised exclusively for parking and circulation.

7. Other terms and conditions

- 7.1 Nothing contained herein shall entitle the Concessionaire to sell, lease, mortgage, transfer, or otherwise encumber the Project Assets or any spaces therein, save as provided in Clauses 5.2.4 and 5.2.5 of the Concession Agreement.

SCHEDULE – C

(See Clause 2.1)

PROJECT FACILITIES

1 Project Facilities

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

2 Project Facilities for Rail System

Project Facilities forming part of the Rail System and to be completed on or before the Project Completion Date have been described in Annex-I of this Schedule-C.

Annex - I
(Schedule-C)

Project Facilities for Rail System

1 Project Facilities

The Concessionaire shall construct the Project Facilities described in this Annex-I to form part of the Rail System. The Project Facilities shall include:

- (a) Ticketing counters/booths;
- (b) ticket vending machines;
- (c) pedestrian facilities;
- (d) toilets;
- (e) tree plantation;
- (f) facilities for disabled;
- (g) lifts and escalators at Stations;
- (h) public address system at Stations;
- (i) public information systems at Stations;
- (j) refreshment facilities at Stations;
- (k) public access telephones;
- (l) staircases at Stations; and
- (m) advanced safety equipment for security of commuters.

2 Description of Project Facilities

Each of the Project Facilities is briefly described below:

(a) Ticketing Counters/Booths

Ticketing Counters/Booths shall be provided at all Stations in accordance with Good Industry Practice.

(b) Ticket Vending Machines

Ticket Vending Machines, adequate in number, shall be provided at Stations to enable passengers to buy tickets.

(c) Pedestrian Facilities

Pedestrian facilities from the road to the concourse/car park and/or to the ticket counters and back shall be provided to enable unhindered smooth flow of pedestrians using the Rail System.

(d) Toilets

Toilets shall be provided separate for male and female and for disabled and normal passengers. These facilities can be provided in parking and circulation areas or near Stations on pay and use basis.

(e) Tree Plantation

The existing trees shall be protected during construction and wherever trees are proposed to be cut, additional saplings have to be planted as per Andhra Pradesh Water, Land and Trees Act, 2002 before felling of the identified trees. Land for plantation of additional saplings (in lieu of the trees required to be cut) shall be provided by the Government free of charge and the cost of such saplings and plantation shall be borne by the Government.

(f) Facilities for disabled

Facilities for disabled shall be provided at all Stations for their safe movement from parking areas to the platforms and back.

(g) Lifts and escalators at Stations

Lifts and escalators shall be provided at Stations for the use of passengers including the physically challenged.

(h) Public address system (PAS) at Stations

PAS shall be provided at all Stations as specified in Schedule-D.

(i) Public Information System at Stations

Public Information System shall be provided at all Stations in accordance with Schedule-D.

(j) Refreshment Facilities at Stations

Facility of vending mineral water, cool drinks, coffee and tea shall be provided at all Stations at prices not exceeding the Maximum Retail Price marked on each such item.

(k) Public Access Telephone

Public access telephones shall be provided at all Stations at convenient location(s).

(l) Staircases at Stations

Staircases shall be provided at all Stations for the use of passengers.

(m) Advanced Safety equipment for safety of commuters

Following advanced equipment for safety of commuters shall be provided at each station and other key installations:

- 1) Baggage screening devices employing multiple technologies in a single unit and operating with multiple energy levels, capable to identify organic and metallic threats on independent screens, respectively;
- 2) Highly sensitive hand held devices capable of explosive detection and material identification even in traces upto femtograms (fg) using technologies like amplifying fluorescent polymers; and
- 3) Small unmanned vehicles capable of operating remotely, carrying different payloads and engaging in roles in the event of a disaster.

All the above versatile equipment, supplied for providing security and ensuring safety of the commuters shall be sourced from OEMs for continued support and services.

SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1 Rail System

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

- 2.** Real 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.

Annex - I
(Schedule-D)

Specifications and Standards for the Rail System

1 Manual of Specifications and Standards to apply

Subject to the provisions of Paragraph 2 of this Annex-I, the Rail System shall conform to the Manual of Specifications and Standards (the “Manual”) for the Hyderabad Metro Rail System published by the Government of Andhra Pradesh. An authenticated copy of the Manual has been provided to the Concessionaire as part of the bid documents.

2 Deviations from the Manual

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

The following special features of the Project shall be taken into account in design:

- a) Crossings at double elevation.
 - (i) Corridor-III will cross over the existing railway track at Mettuguda, Alugadda bavi and Oliphenta bridge. The track level and span (center to center) of piers shall be worked out accordingly.
 - (ii) Corridor-I will cross over the existing railway track at Malakpet (Bangalore to Hyderabad BG line). The track level and span (centre to centre) of piers shall be worked out accordingly.
 - (iii) Corridor-III will cross over the existing flyover at Greenland’s junction and Corridor-I will cross over the existing flyover at Punjagutta junction and flyover at Nalgonda cross roads junction.
 - (iv) At Ameerpet, Corridor-III (Nagole to Shilparamam) will cross under Corridor-I (Miyapur to L.B.Nagar) and will run parallel to it for some distance.
 - (v) At Parade grounds Corridor-II will cross over Corridor-III.
 - (vi) Corridor-I crosses river Musi at MGBS and Corridor-II will cross under Corridor-I at MGBS and Corridor-II will run parallel to river Musi upto Imlibun bridge near Salarjung museum. Alternative superstructure system which will reduce construction time significantly may have to be adopted for these bridges to suit site conditions. For

these river bridges, foundation design should take into account scour and settlement conditions in river bed.

- (vii) At Hi-tec city junction Corridor-III will cross over the new flyover as double elevated.
- b) Crossings of at grade-railway track by elevated viaduct.
 - (i) Crossing of Secunderabad railway station (Corridor-II).
 - (ii) Crossing of Begumpet railway station (Corridor-III).
 - (iii) Crossing of Bharatnagar railway station (Corridor-I).
- c) Crossings of underpasses by elevated viaduct.
 - (i) Crossing of railway line at Nirankari bhavan.
 - (ii) Crossing of the proposed road underpass at Hi-tec city junction.

SCHEDULE –E
(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The Concessionaire shall obtain, as required under the Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Government in accordance with Clause 4.1.3 of the Agreement:

- (a) Permission of the State Government for extraction of boulders from quarry;
- (b) Permission of Pollution Control Board for installation of crushers;
- (c) Licence for use of explosives;
- (d) Permission of the State Government for drawing water from river/reservoir;
- (e) Licence from Inspector of factories or other competent authority for setting up Batching Plant;
- (f) Clearance of Pollution Control Board for setting up Batching Plant;
- (g) Clearance of Pollution Control Board for Asphalt Plant;
- (h) Clearance of Pollution Control Board for installation of diesel generator sets;
- (i) Fire safety clearance from fire authorities;
- (j) Permission of State Government for cutting of trees;
- (k) Permit for employing unskilled/semiskilled labour during day/night;
- (l) Permissions from Greater Hyderabad Municipal Corporation (GHMC) for architectural/development approval of proposed permanent structures as per building-by-laws/regulations, and dismantling/reconstruction/ underpinning/ strengthening of affected structures, disposal of solid waste/excess material or soil, setting up of temporary camps on Government/private/leased land;
- (m) Clearance for any urban structure affecting the landscape/environment from the concerned authority;
- (n) Permission from Archaeological Survey of India for construction of any structure within the prescribed radius of protected monuments;
- (o) Permissions from the public utilities for diversion of utilities including reinstatement/reconstruction to original specifications;

- (p) Approvals for electric supply/distribution;
- (q) Approval of Traffic Police for diversions and running of vehicles on specified routes; and
- (r) Any other permits or clearance required under the Applicable laws.

SCHEDULE –F

*(See Clause 9.1)***PERFORMANCE SECURITY**

The Principal Secretary to Government,
Municipal Administration & Urban Development Department
Government of Andhra Pradesh
Metro Rail Bhavan, Saifabad,
Hyderabad-4, Andhra Pradesh

WHEREAS:

- (A) L&T Hyderabad Metro Rail Private Limited (the “**Concessionaire**”) and the Principal Secretary to Government, Municipal Administration & Urban Development Department, Government of Andhra Pradesh (the “**Government**”) have entered into a Concession Agreement dated(the “**Agreement**”) whereby the Government has agreed to the Concessionaire undertaking the construction and operation of the Rail System for a length of 71.16 km in 3 (three) corridors viz. Miyapur to L.B.Nagar; Jubilee Bus Station to Falaknuma; and Nagole to Shilparamam in Hyderabad city on design, build, finance, operate and transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Concessionaire to furnish a Performance Security to the Government in a sum of Rs.360 cr. (Rupees three hundred and sixty crore only) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, through our Branch at(the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

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

2. A letter from the Government, under the hand of an Officer not below the rank of Deputy Secretary to the Government that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Government shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Government and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Government shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Government to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Government shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Government against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Government, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Government of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Government or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Government in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Government on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Government under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 20% (twenty per cent) of the Total Project Cost which is deemed to be Rs.12,132 (Rupees twelve thousand one hundred and thirty two) crore only for the purposes of this Guarantee, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Government shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Government in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Government that the envelope was so posted shall be conclusive.

11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Government pursuant to the provisions of the Agreement

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

SIGNED, SEALED AND DELIVERED

For and on behalf of

the BANK by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

SCHEDULE –G
(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Government of such compliance along with necessary particulars thereof. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Real 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 Rail System 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 commenced construction of bridges, piers and girders, and expended not less than 15% (fifteen per cent) of the Total Project Cost set forth in the Financial Package.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the 730th (seven hundred and thirtieth) day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced construction of maintenance depots and expended not less than 30% (thirty per cent) of the Total Project Cost set forth in the Financial Package.

5. Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the 1100th (Eleven Hundredth) day from the Appointed Date (the “**Project Milestone-IV**”).

5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced laying of track on the Rail System and 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 1500th (Fifteen Hundredth) day from the Appointed Date (the “**Project Milestone-V**”).

6.2 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced trial running of the Rail System using automatic train protection controls and 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 occur on the 1826th (one thousand eight hundred and twenty sixth) day from the Appointed Date.

7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Rail System 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 12.3)

DRAWINGS

1 Drawings

In compliance of the obligations set forth in Clause 12.3 of this Agreement, the Concessionaire shall furnish to the Independent Engineer, free of cost, all Drawings listed in Annex-I of this Schedule-H.

2 Additional drawings

- 2.1 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 Annex-I of this Schedule-H.

Annex - I
(Schedule-H)

List of Drawings

1. Drawings

List of conceptual drawings applicable to this Agreement are as under

S.no.	Drawing No.	Description
	A – Rail System Site	
1.	A/1	Rail System Site Plan
2.	A/2	Alignment Plan and Profile
3.	A/3	Structure Gauge
	B – System Drawings	
		<i>B/1 - Rolling Stock</i>
4.	B/1/1	Layout of DM car
5.	B/1/2	Layout of TM car
6.	B/1/3	Layout of DML car
		<i>B/2 – Signalling and Train Control – Schematic</i>
7.	B/2/1	CATC System
8.	B/2/2	Station Signalling
		<i>B/3 - Electric Power - Schematic</i>
9.	B/3/1	33 KV Distribution System
10.	B/3/2	Traction Power
11.	B/3/3	SCADA System
		<i>B/4 - Communications System – Schematic</i>
12.	B/4/1	Data Transmission System
13.	B/4/2	Clock Systems

S.no.	Drawing No.	Description
14.	B/4/3	Telephone Systems
15.	B/4/4	CCTV System
16.	B/4/5	Public Address System
17.	B/4/6	Radio System
18.	B/4/7	Station Management System
19.	B/4/8	Train Borne Systems
20.	B/4/9	Passenger Information System
		<i>B/5 - Automatic Fare Collection</i>
21.	B/5	AFC Schematic Diagram
		<i>B/6 - Operation Control Center</i>
22.	B/6/1	OCC Traffic Controller Workstation
23.	B/6/2	OCC Engineering Control Workstation
24.	B/6/3	OCC Control Superintendent
		<i>B/7 – Mechanical &Electrical Equipments</i>
25.	B/7/1	Power Supply Traction Substation Locations
26.	B/7/2	Power Supply Traction Substation Equipment
27.	B/7/3	Lighting and Power Substation Equipment
28.	B/7/4	Traction Substation Layout, Lighting and Power Substation Layout
29.	B/7/5	Power Distribution Schematic - High Voltage Substation
30.	B/7/6	Power Distribution Schematic – Traction Loop Feeders
31.	B/7/7	Power Distribution Schematic – Depot Loop Feeders.
32.	B/7/8	Lighting and Power Substation – Loop Feeders Schematic
33.	B/7/9	Earthing and Bonding – Stray Current Control

S.no.	Drawing No.	Description
34.	B/7/10	Vehicle ATP/ATO Interfaces
35.	B/7/11	Illustrative System Structure – Train Operation
36.	B/7/12	Indicative Control Centre Layout
37.	B/7/13	Public Address System – Schematic
38.	B/7/14	Breakdown Message – Facility Schematic
	C – Accommodating Structures	
		<i>C1 – Typical viaduct</i>
39.	C1/1	Typical GAD of Viaduct
40.	C1/2	Typical Layout of Spans of Viaduct
41.	C1/3	Construction Scheme of Typical viaduct super structure
42.	C1/4	Typical viaduct cross section
		<i>C2 – Layout while crossing a road Fly over</i>
43.	C2/1	Typical GAD of special plan while crossing a road flyover
44.	C2/2	Portal Details
45.	C2/3	Typical GAD of Special span for crossing under passes – Corridor-III
46.	C2/4	Typical GAD of viaduct over Secunderabad Railway station- Corridor-II
		<i>C 3 – Typical Station Concepts</i>
47.	C3/1	Typical Station Design – Category I: Plans
48.	C3/2	Typical Station Design – Category I: Section & Elevation
49.	C3/3	Typical Station Design – Category II: Plan
50.	C3/4	Typical Station Design – Category II: Section & Elevation
51.	C3/5	Typical Station Design – Category III: Plan

S.no.	Drawing No.	Description
52.	C3/6	Typical Station Design – Category III: Section & Elevation
		<i>C4 – Station Layout Drawings for each Station of the Rail System</i>
53.	C4/1	Architectural Layout & Concept Drawings
54.	C4/2	At grade road level plan with access to PTS & Other modes
55.	C4/3	Parking Level Plan
56.	C4/4	Concourse Level Plan
57.	C4/5	Platform Level Plan
58.	C4/6	Section
59.	C4/7	Detailed Structural design drawings for C4/1 to C4/6
		<i>C 5 – Interchange Stations</i>
60.	C5/1	Interchange Station M.G.Bus station : Plan
61.	C5/2	Interchange Station M.G.Bus station : Section & Elevation
62.	C5/3	Interchange Station Ameerpet : Plan
63.	C5/4	Interchange Station Ameerpet : Section & Elevation
64.	C5/5	Interchange Station Parade Grounds : Plan
65.	C5/6	Interchange Station Parade Grounds : Section & Elevation
		<i>C 6 – Intermodal arrangement with Railway Stations</i>
66.	C6/1	Intermodal Station Bharathnagar : Plan
67.	C6/2	Intermodal Station Khairatabad : Plan
68.	C6/3	Intermodal Station Malakpet : Plan
69.	C6/4	Intermodal Station Secunderabad : Plan
70.	C6/5	Intermodal Station Falaknuma : Plan

S.no.	Drawing No.	Description
71.	C6/6	Intermodal Station Begumpet : Plan
		<i>C 7 – Intermodal arrangement with Bus Station</i>
72.	C7/1	Intermodal Station – Miyapur : Plan
73.	C7/1	Intermodal Station – M G Bus station : Plan
74.	C7/1	Intermodal Station – Dilshuknagar : Plan
75.	C7/1	Intermodal Station – Jubli Bus station : Plan
76.	C7/1	Intermodal Station – Charminar : Plan
77.	C7/1	Intermodal Station – Falakunama : Plan
		D – Traffic Diversion
78.	D1/1	Traffic Diversion & Management Concept Plan during Excavation & Laying of foundation for Piers
79.	D1/2	New road formation Plan for Traffic diversion by reducing footpath / by land acquisition during Excavation & Laying of foundation for Piers
80.	D1/3	Temporary Barricading Plan during Excavation & Laying of foundation for Piers
81.	D1/4	Temporary Barricading Plan during construction of Piers
82.	D1/5	Temporary Barricading Plan during construction of viaduct portion
83.	D1/6	Traffic Diversion & Management Concept Plan during Excavation & Laying of foundation for Piers at stations
84.	D1/7	New road formation Plan for Traffic diversion by reducing footpath / by land acquisition during Excavation & Laying of foundation for Piers for stations
85.	D1/8	Temporary Barricading Plan during Excavation & Laying of foundation for Piers for station Building
86.	D1/9	Temporary Barricading Plan during construction of Piers for Station Building
87.	D1/10	Temporary Barricading Plan during construction of

S.no.	Drawing No.	Description
		super structure for Station Building
	E – Maintenance Facilities and Depots	
88.	E/1	Depot-I Yard Layout
89.	E1/1	Depot-I Layout – Elevated Concrete Platform – Plan
90.	E1/2	Depot-I Layout – Elevated Concrete Platform – Section
91.	E1/3	Road Layout at Depot-I
92.	E1/4	Land usage at Depot-I
93.	E/2	Depot-II Yard Layout
94.	E2/1	Depot-II Layout – Elevated Concrete Platform – Plan
95.	E2/2	Depot-II Layout – Elevated Concrete Platform – Section
96.	E2/3	Road Layout at Depot-II
97.	E2/4	Land usage at Depot-II
98.	E/3	Depot-III Yard Layout
99.	E3/1	Depot-III Layout – Elevated Concrete Platform – Plan
100.	E3/2	Depot-III Layout – Elevated Concrete Platform – Section
101.	E3/3	Road Layout at Depot-III
102.	E3/4	Land usage at Depot-III
	F – Property Development	
103.	F/1	Depot-I property development site plan, section, elevation and perspective drawings
104.	F/2	Depot-II property development site plan, section, elevation and perspective drawings
105.	F/3	Depot-III property development site plan, section, elevation and perspective drawings
106.	F/4	Property development site plan, section, elevation and perspective drawings of each Station

S.no.	Drawing No.	Description
107.	F/5	Property development site plan, section, elevation and perspective drawings of each P&C Area at / near Stations
108.	F/6	Ameerpet Interchange Station: Property development site plan, section, elevation and perspective drawings
109.	F/7	Parade Grounds Interchange Station: Property development site plan, section, elevation and perspective drawings
110.	F/8	M.G.Bus Station Interchange Station: Property development site plan, section, elevation and perspective drawings

SCHEDULE –I
(See Clause 14.1.2)

TESTS

1 Schedule for Tests

- 1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of Rail System, notify the Independent Engineer and the Government of its intent to subject the Rail System to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Government detailed inventory and particulars of all works and equipment forming part of Rail System.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Rail System 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 Government who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2 Tests

- 2.1 Tests: Without prejudice to the provisions of this Clause 2, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with Good Industry Practice, for determining the compliance of the Rail System with Specifications and Standards. The Tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such Tests shall, to the extent possible, not exceed 10% (ten per cent) of the tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice.
- 2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Rail System to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 Structural Test for bridges and viaducts:
- 2.3.1 All bridges and viaducts constructed by the Concessionaire shall be subjected to non-destructive testing of completed structures or part thereof, to be conducted in accordance with the procedure described in IS-13311. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out the aforesaid testing if it has a reasonable doubt about the adequacy of the strength of such structure for any of the following reasons:

- (a) Results of compressive strength on concrete test cubes falling below the specified strength;
 - (b) premature removal of formwork;
 - (c) inadequate curing of concrete;
 - (d) over loading during the construction of the structure or part thereof;
 - (e) presence of honey - combed or damaged concrete that may affect the stability of the structure to carry the design load; or
 - (f) any other reason which may result in the structure or any part thereof being of less than the expected strength.
- 2.3.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out destructive testing of one full standard span (upto its failure). Such testing shall be carried out at the initial stages of production of precast segments of the superstructure.
- 2.3.3 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out routine load test of at least 3 (three) spans each of different span configurations. One routine load test shall also be carried out for a larger span (non-standard) at a special crossing, in accordance with the procedure described in IRC, SP 51.
- 2.4 Tests for equipment and rolling stock: Independent Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of equipment, rolling stock, traction equipments, signalling, telecommunication and fare collection equipment with the Specification and Standards and Safety Requirements. Without prejudice to the generality of this Clause 2.4, such Tests shall include:
- (i) A static test on the car body shall be conducted in accordance with UIC 566 for validating the design. The crash worthiness may be evaluated through computer simulations with the parameters obtained in such test;
 - (ii) Emergency braking distance trials;
 - (iii) Signal electromagnetic interference (EMI) trials;
 - (iv) Performance rating and adhesion trials;
 - (v) Oscillation trials; and
 - (vi) Any other Test as may be prescribed under Applicable Laws.
- 2.5 Trial run of Trains: The Independent Engineer shall conduct or cause to be conducted adequate trial runs of Trains to determine the compliance of the Rail System,

including equipment and rolling stock, with the Specification and Standards, Maintenance Requirements and Safety Requirements.

- 2.6 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Rail System with the environmental requirements set forth in Applicable Laws and Applicable Permits.
- 2.7 Safety review: Safety audit of the Rail System shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Rail System with the provisions of this Agreement.

3 Agency for conducting Tests

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

4. Tests for Safety Certification

Tests for determining the conformity of the Rail System 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 14.

SCHEDULE –J
(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

- 1 I, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for the Rail System for Corridor-I, Corridor-II and Corridor-III in city of Hyderabad on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been successfully undertaken to determine compliance of the Rail System with the provisions of the Agreement, and I am satisfied that the Rail System can be safely and reliably placed in commercial service of the Users thereof.

- 2 It is certified that, in terms of the aforesaid Agreement, all works forming part of Rail System have been completed, and the Rail System is ready for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT ENGINEER by:

(Signature)

(Name)

(Designation)

(Address)

PROVISIONAL CERTIFICATE

- 1 I/We, (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for the Rail System comprising Corridor-I, Corridor-II and Corridor-III for 3 (three) corridors in city of Hyderabad on design, build, finance, operate and transfer (DBFOT) basis, through (Name of Concessionaire), hereby certify that the Tests specified in Article 14 and Schedule-I of the Agreement have been undertaken to determine compliance of the Rail System with the provisions of the Agreement.

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

- 3 In view of the foregoing, I am satisfied that the Rail System can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Rail System is hereby provisionally ready for entry into commercial operation on this the day of 20....

ACCEPTED, SIGNED, SEALED AND
DELIVERED

For and on behalf of
CONCESSIONAIRE by:

(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND
DELIVERED

For and on behalf of
INDEPENDENT ENGINEER by:

(Signature)
(Name and Designation)
(Address)

SCHEDULE – K*(See Clause 17.2)***MAINTENANCE REQUIREMENTS****1 Maintenance Requirements**

- 1.1 The Concessionaire shall, at all times, operate and maintain the Rail System in accordance with the provisions of the Agreement, Applicable Laws and Applicable Permits. In particular, the Concessionaire shall, at all times during the Operation Period, conform to the maintenance requirements set forth in this Schedule-K (the “Maintenance Requirements”).
- 1.2 The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2 of this Schedule-K within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Government shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Government under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex - I of this Schedule - K within the time limit set forth therein.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex - I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice.
- 3.2 In respect of any defect or deficiency not specified in Annex-I of this Schedule-K, the Independent Engineer may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire within the time limit specified by the Independent Engineer.

4 Extension of time limit

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

by the Independent Engineer and conveyed to the Concessionaire and the Government with reasons thereof.

5 Emergency repairs/restoration

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

6 Daily Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a daily visual inspection of the Rail System and maintain a record thereof in a register to be kept in such form and manner as the Independent Engineer may specify. Such record shall be kept in safe custody of the Concessionaire and shall be open to inspection by the Government and the Independent Engineer at any time during office hours.

7 Divestment Requirements

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

8 Display of Schedule - K

The Concessionaire shall display a copy of this Schedule-K at every Station along with the Complaint Register stipulated in Article 46.

Annex - I
(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein or the time limits as mutually agreed upon by the Government and the Concessionaire in consultation with the Independent Engineer.

Nature of defect or deficiency	Time limit for repair/rectification
I. TRACTION EQUIPMENT	
(i) Failure of traction power supply	- 5 minutes
(ii) Failure of traction equipment	- 1 hour
II. TRAINS	
(i) Failure of Train on mainline	- 30 minutes
(ii) Malfunctioning of doors	- 5 minutes
(iii) Acceleration less than 1 m/sec ²	- 2 hours
(iv) Deceleration less than 1.2 m/ sec ²	- 2 hours
(v) Jerk rate / rate of change of acceleration exceeding 0.7 m/ sec ³	- 2 hours
(vi) Temperature inside a coach exceeding 25°C when ambient temperature is 35°C or less	- 1 hour
(vii) Difference between the external ambient temperature and the temperature inside the coach exceeding 10°C when the ambient temperature is more than 35°C.	- 1 hour
(viii) Temperature inside a coach falling below 15°C	- 1 hour
(ix) Dirt, litter, garbage, stains, spillage or dust on floors, walls, fixtures, furniture or signage	- 1 hour

Nature of defect or deficiency	Time limit for repair/ rectification
(x) Damage or malfunction of electrical fittings	- 30 minutes
(xi) Failure of electric supply (substitution by emergency lights)	- 5 seconds
III SIGNALLING	
(i) Failure of signalling system leading to unsafe operation of Trains.	- 30 minutes
(ii) Signalling defect causing reduction in frequency of Trains below 20 (twenty) trains per hour in each direction.	- 1 hour
IV STATIONS	
(i) Accumulation of litter, dust, trash, debris etc.	- 15 minutes
(ii) Lighting level falling below 250 Lux	- 1 hour
(iii) Malfunctioning of lifts, escalators or walkalators	- 1 hour
(iv) Damage or malfunctioning of electric, water and sanitary installations	- 2 hours
(v) Failure of electric supply (substitution by emergency lights)	- 30 seconds
(vi) Failure of automatic fare collection equipment	- 1 hour
(vii) Dirt, litter, garbage, stains, spillage or dust on floors, walls, fixtures, furniture or signage	- 30 minutes
(viii) Dirt or odour in toilets	- 30 minutes
(ix) Breakage of glass or furniture	- 24 hours
(x) Discontinuation of drinking water supply	- 2 hours

Nature of defect or deficiency	Time limit for repair/ rectification
(xi) Waste bins when 3/4 th full	- 15 minutes
(xii) Failure of public address system	- 1 hour
(xiii) Failure of telecommunication system	- 1 hour
(xiv) Temperature inside the covered enclosures at the Station exceeding 25°C when ambient temperature is 35°C or less	- 1 hour
(xv) Difference between the ambient temperature and the temperature inside the covered enclosures at the Station exceeding 10°C when the external ambient temperature is more than 35°C.	- 1 hour
(xvi) Temperature inside the covered enclosures at the Station falling below 15°C.	- 1 hour

V. RAIL TRACKS

(a) Rail Track

(i) Breach or blockade	- Temporary restoration of traffic within 2 hours and permanent restoration within 7 days
(ii) Jerks during foot-plating	- 1 day
(iii) Rail fracture, buckling of rails or welding failure	- Temporary Restoration within 1 hour and permanent restoration within 24 hours

Nature of defect or deficiency	Time limit for repair/ rectification
(iv) Removal of debris	- 2 hours
(b) Hard/earth shoulders, side slopes, drains, embankments and culverts	
(i) Variation by more than 2% in the prescribed slope of camber/cross fall	- 15 days
(ii) Edge drop at shoulders exceeding 40 mm	- 3 days
(iii) Variation by more than 15% in the prescribed side (embankment) slopes	- 15 days
(iv) Rain cuts/gullies in slope	- 3 days
(v) Damage to or silting of culverts and side drains during and immediately preceding the rainy season	- 3 days
(vi) Desilting of drains	- 24 hours
(c) Track side furniture	
Damage to shape or position; poor visibility or loss of retro-reflectivity	- 24 hours
(d) Trees and plantation (along the centre verge of the alignment)	
(i) Obstruction in a minimum head-room of 5 m above carriageway or obstruction in visibility of road signs	- 24 hours
(ii) Deterioration in health of trees and bushes	- Timely watering and treatment
(iii) Replacement of trees and bushes	- 90 days
(e) Other Project Facilities and Approach roads	
Damage or deterioration in Approach Roads, pedestrian facilities, and other works	- 2 days

Nature of defect or deficiency	Time limit for repair/ rectification
VI. BRIDGES / ELEVATED STRUCTURES	
(a) Superstructure of bridges/ elevated structures	
(i) Cracks	
Temporary measures	- within 24 hours
Permanent measures	- within 15 days
(ii) Spalling/scaling	- 7 days
(b) Foundations of bridges / elevated structures	
Scouring and/or cavitation	- 7 days
(c) Piers, abutments, return walls and wing walls of bridges / elevated structures	
Cracks and damages including settlement and tilting	- 15 days
(d) Bearings (metallic) of bridges / elevated structures	
Deformation	- 15 days
(e) Joints in bridges / elevated structures	
Loosening and malfunctioning of joints	- 7 days
(f) Other items relating to bridges / elevated structures	
(i) Deforming of pads in elastomeric bearings	- 3 days
(ii) Gathering of dirt in bearings and joints; or clogging of spouts, weep holes and vent-holes	- 2 days
(iii) Damage or deterioration in parapets and handrails	- 2 days
(iv) Rain-cuts or erosion of banks of the side slopes of approaches	- 7 days

Nature of defect or deficiency			Time limit for repair/ rectification
(v)	Damage to wearing coat	-	7 days
(vi)	Damage or deterioration in approach slabs, pitching, apron, toes, floor or guide bunds	-	15 days
(vii)	Growth of vegetation affecting the structure or obstructing the waterway	-	7 days

SCHEDULE –L
(See Clause 18.1.1)

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 the Rail System, irrespective of the person(s) at fault.
- 1.2 Users of the Rail System include staff of the Concessionaire and its contractors working on the Rail System.
- 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) Manual for Safety, issued by the Government;
- (c) provisions of this Agreement;
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

For carrying out safety audit of the Rail System under and in accordance with this Schedule-L, the Government 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 Rail System.

4 Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of this Agreement, the Government shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
- 4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “**Safety Drawings**”). Such design details shall include horizontal and vertical alignments; sightlines; layouts of viaducts, tunnels, elevated structures and Stations along with other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Government and the Concessionaire.
- 4.3 The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Rail System. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Government, in five copies. One copy each of the Safety Report shall be forwarded by the Government to the Concessionaire and the Independent Engineer forthwith.
- 4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Rail System, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Government, Specifications and Standards and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Government forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of the Government for funding such works in accordance with the provisions of Article 18.
- 4.5 Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Government, and no later than 15 (fifteen) days of receiving such comments, the Government shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Government may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 Safety measures during Construction Period

- 5.1 A Safety Consultant shall be appointed by the Government, no later than 6 (six) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.
- 5.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the Rail System to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Rail System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.
- 5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Government and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

- 6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 6.2 The Concessionaire shall establish a Rail Safety Management Unit (the “RSMU”) to be functional on and after COD, and designate one of its officers to be in-charge of the RSMU. Such officer shall have specialist knowledge and training in rail system safety by having attended a course conducted by a reputed organisation on the subject.
- 6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Rail System. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Government for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Government at the conclusion of every quarter and to the Safety Consultant as and when appointed.
- 6.4 The Concessionaire shall submit to the Government before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-L for averting or minimising such accidents in future.

- 6.5 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant to be appointed by the Government. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Rail System. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Rail System. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

7 Costs and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule, shall be met in accordance with Article 18, and in particular, the remuneration of the Safety Consultant, safety audit, and costs incidental thereto, shall be met out of the Safety Fund.

Annex - I
(Schedule-L)

Safety Guidelines

1 Safe movement

In the design, construction and operation of Stations and Trains, particular care shall be taken to ensure safety of Users in entry and exit; while waiting, boarding or alighting; and in moving Trains. This shall include facilities for safe and efficient evacuation in case of emergency. In particular, Trains shall be designed and tested for safe movement.

2 System integrity

In the design of power supply, signalling, track-work, circuits and equipments, particular care shall be taken to minimise the likely incidence of failure.

3 Restoration of service

The Rail System shall be designed such that in the event a fault occurs, a limited service can be provided within a few minutes by isolation of the affected area or equipment, to the extent possible.

4 Safety management

A safety statement shall be prepared by the Concessionaire once every quarter to bring out clearly the system of management of checks and maintenance tolerances for various assets including rolling stock, track and signalling, and compliance thereof. The statement shall also bring out the nature and extent of, staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Engineer within 15 (fifteen) days of the close of every quarter.

5 Safety equipment

The following equipment shall be provided at every Station:

- (a) Fire extinguishers and fire alarms at the appropriate locations on the platforms;
- (b) two fire extinguishers in the Station office;
- (c) two stretchers and two standard first aid boxes; and
- (d) such other equipment as may be required in conformity with Good Industry Practice.

6 Emergency

A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a Disaster Management Manual to be prepared and published by the Concessionaire prior to COD.

7 Fire safety

7.1 The Concessionaire shall adopt provisions of the National Fire Protection Association (NFPA) 130 standard for fixed guideway transit and passenger rail systems.

7.2 To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

7.3 Emergency exit should be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open from inside the Station in case of emergency.

7.4 Escape routes shall be clearly marked by arrows in the correct direction and no cryptic symbols shall be used. In complying with the provisions of this Clause 7.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

8 User safety and information system:

8.1 The Concessionaire shall provide the RSMU with the facilities required for supervising passenger areas and Trains, and shall provide visual information to Users, both onboard and on the Stations. The Concessionaire shall also provide one way communication to Users at the Stations through a Public Announcement (PA) system. The User call points should be located on all platforms at convenient locations to allow Users to contact the RSMU in emergencies.

8.2 The User information system shall comprise dynamic visual displays and loudspeakers.

SCHEDULE –M
(See Clauses 19.6 and 22.1)

MONTHLY FARE STATEMENT

Rail System:

Month:

Distance (in km)	For corresponding month of previous year		For preceding month		For the month reported upon		
	No of Users	Fare collected (in lakh Rs.)	No of Users	Fare collected (in lakh Rs.)	Fare per User (in Rs.)	No. of Users	Fare collected (in lakh Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Upto 2							
>2 Upto 6							
>6 Upto 10							
>10 Upto 14							
>14 Upto 18							
Above 18							
Unlimited use for the day							
Total							

Note 1: Monthly Fare Statements for Monthly Passes and Daily Passes have been prepared separately in the above format and are enclosed.

Remarks, if any:

WEEKLY TRAFFIC CENSUS

Rail System:

Week ending:

Distance (in km) (1)	PKM and No. of Users using the Rail System during the week (total) (in thousand)					
	corresponding week/last year		Preceding week		week of report	
	PKM (2)	No. of Users (3)	PKM (4)	No. of Users (5)	PKM (6)	No. of Users (7)
Upto 2						
>2 Upto 6						
>6 Upto 10						
>10 Upto 14						
>14 Upto 18						
above 18						
Unlimited use for the day						
Total						

Remarks, if any:

DAILY REPORT FOR TRAIN OPERATIONS**Rail System:****Date:**

Hour of Day (1)	No of Trains operated (2)	Carrying capacity (in User nos.) (3)	No. of Users (In thousand) (4)	Average speed of Trains (5)	PHPDT (for 4 Peak Hours) (6)
5.00 – 6.00 am					
6.00 – 7.00 am					
7.00-8.00 am					
8.00-9.00 am					
9.00-10.00 am					
10.00-11.00 am					
11.00 am-12.00 noon					
12.00 – 1.00 pm					
1.00-2.00 pm					
2.00 – 3.00 pm					
3.00 – 4.00 pm					
4.00 – 5.00 pm					
5.00 – 6.00 pm					
6.00 – 7.00 pm					
7.00 – 8.00 pm					
8.00 – 9.00 pm					
9.00 - 10.00 pm					
10.00 - 11.00 pm					
11.00 - 12.00 pm					
Total					

Remarks, if any:

SCHEDULE-N
(See Clause 21.8)

PASSENGER CHARTER
Hyderabad Metro Rail System

At your service

Our Passenger Charter explains our commitments to you and sets out the targets that these are based upon. It is not legally binding and does not affect your legal rights, which are set under the law. Copies of the Conditions can be obtained from all staffed stations or from our Customer Service Centre. They can also be viewed online at www._____.

Contents

- (1) Introduction
- (2) Our standards for train service performance
- (3) Information and planning for your journey
- (4) Passengers who require assistance
- (5) Buying a ticket
- (6) Your journey
- (7) Claims for delays and cancellations
- (8) Listening to your views

1. Introduction

We want to give our passengers excellent service!

This is a bold statement but its intention is to focus the mind of every employee of the Hyderabad Metro Rail System, on what is important - our passengers. We aim to provide you with:

- (i) Safe, clean, reliable and punctual services
- (ii) Clean and safe stations
- (iii) Reliable, timely and easy to understand information
- (iv) Polite, friendly and helpful staff

We will also continue to work at improving the integration of our rail services with other rail operators and with other transport providers, especially buses.

Inevitably, there will be times when problems occur and we are not able to achieve the standards we aim for. Our Charter explains what we will do for you when this happens.

2. Our standards for train service performance

We will continue to work hard at improving our performance to provide you with a consistently reliable and punctual service.

2.1 Punctuality

Our target is that 95% of the trains will arrive at their final destination within one minute of the scheduled time.

2.2 Peak time definition

Peak trains are any trains departing between 0830 and 1030 hours inclusive, or between 1730 and 1930 hours inclusive, Monday to Saturday only and the aforesaid time definition may be modified from time to time depending on average daily traffic volumes during these hours.

2.3 Reliability

Our target is that 99% of all scheduled services will run. This is measured from Monday to Saturday (excluding public holidays).

You can view our performance results for the previous four weeks and 12 months on ‘Track Record’ posters displayed at every station of the Hyderabad Metro Rail System.

The results are also available for inspection on request, at all our stations and are published in our Season Ticket (Discounted Fare) section.

The method of monitoring our performance is independently audited annually.

We do not include disruption caused by matters out of the rail industry’s control, such as trespass, vandalism and terrorism.

3. Information and planning for your journey

We will provide you with accurate and impartial information about the rail services, fares and facilities to help you plan your journey. You can obtain this information in a number of ways.

(i) Hyderabad Metro Rail Enquiries - telephone: (24 hours)

Hyderabad Metro Rail Enquiries offers you impartial information on metro train times and fares for any part of the city, on behalf of all the train companies.

* Calls are charged at a local rate and may be monitored.

You can also obtain online information about train times and up-to-the-minute train-running information by visiting www._____.

(ii) **Customer Service Centre – Tel:** _____

In addition to the Hyderabad Metro Rail Enquiries, Customer Service Centre also provides information on how our train services are running. The Customer Service Centre is open 24 hours a day except on national holidays.

* Calls are charged at a local rate and may be monitored.

3.1 At Stations

Staff in our ticket offices and Travel Centres can provide you with information to help you plan your journey.

We will display up-to-date timetable posters at all stations. These will include the main destinations and connections served from the station.

Timetables and pocket timetables are available in advance of timetable changes.

We also provide information on posters and other signages at stations about the location of bus stops and other local transport to help you continue your journey.

3.2 Our website

We aim to provide as much useful and relevant information as possible on our website to help you plan your journey. This includes real-time train-running information and pocket timetables to download.

3.3 Engineering work

3.3.1 Planned engineering work

From time to time, Hyderabad Metro Rail System has to carry out planned engineering and improvement work to maintain the track, equipment and signalling. This can cause alterations to our services, especially on weekends and public holidays.

When alterations take place, we will advise you in advance where possible through our published timetables and at your station.

For weekend and public holiday engineering work affecting our services, a poster titled ‘Changes to Train Times’ will be displayed at each station we serve.

Information will also be available from:

- Hyderabad Metro Rail Enquiries
- Customer Service Centre

We will always aim to provide information at least four weeks in advance through these three channels.

3.3.2 Unplanned engineering work

Occasionally, Hyderabad Metro Rail System has to carry out emergency engineering work at very short notice. When this happens we aim to inform you through Hyderabad Metro Rail Enquiries, our Customer Service Centre, station and on-train public address announcements, station posters, Teletext and local radio stations.

3.3.3 Bus replacement services

When metro train services are replaced by a special bus service, for all or part of the journey, it may not be possible for you to take prams or bicycles on these buses. Please enquire at your local station or contact our Customer Service Centre if you need further advice.

3.3.4 Help and advice during your journey

We understand that alterations to services due to engineering work can cause extra problems for customers. Our on-train and station staff can help you if you need advice. We have also installed 24-hour Help Points at most of our stations (normally located on platforms) and you can also contact our Customer Service Centre.

4 Passengers who require assistance

We are committed to meeting the travelling needs of our disabled passengers. We recognise that many of our passengers may have special needs which require us to adjust the way we provide our service.

4.1 Advance information and assistance for disabled passengers

We advise passengers who would like assistance to contact our Customer Service Centre in advance. Our staff will advise you of the most suitable route for you, taking into account those stations along our route which may not be accessible for passengers with disabilities.

- (1) Telephone (24 hours):
- (2) Fax:
- (3) Textphone:
- (4) Rail Enquiries textphone:

4.2 Car parking

Every station that has a tarmac or concrete surfaced car park for customers has designated parking spaces for either blue or orange badge holders.

4.3 Station access

Some of our stations may not be fully accessible to passengers with disabilities, either because of the way these stations are constructed or because there are times of the day when there are no station staffs available. Both during and outside these hours, our on-train staffs are also available to help you board and leave the train.

4.4 Trains

All metro trains on our network are fully accessible to disabled passengers.

4.5 Reservations of wheelchair spaces

Reservations are available to disabled passengers on all of our services that have a designated wheelchair space and/or priority seats.

4.6 On-train information

We are committed to providing important travel information in a variety of ways so that it can be accessed by as wide a group of passengers as possible.

All of our metro trains are equipped with public address systems to provide audible announcements to hearing passengers. All metro trains are equipped with a passenger information system that uses visual displays to enable hearing-impaired passengers to access information.

We recognise that good announcements are essential to visually impaired passengers, so our employees are trained to speak clearly.

4.7 Disability awareness training

All our frontline staff and managers receive training in disability awareness.

4.8 Further Information:

Hyderabad Metro Rail System Disabled Persons' Protection Policy (DPPP) sets out our full arrangements for passengers with disabilities. It can be supplied in a range of formats (large print, Braille and audio), available from our Customer Service Centre.

We have also produced a leaflet containing useful information, called 'Our Service for Passengers with Impairments'. It is available at staffed stations and from our Customer Service Centre.

5. Buying a ticket

We will sell you the most appropriate ticket for your journey. To purchase a ticket, visit any of our staffed stations or telephone our Customer Service Centre.

5.1 At stations

- Our ticket office opening hours are displayed at every staffed station. They are also available from our website or by telephoning our Customer Service Centre.
- You can pay by cash or major credit and debit cards.
- Many stations also have self-service ticket machines, which sell a range of tickets to main destinations.
- We will try to ensure that you do not need to queue for more than five minutes at busy times and no more than three minutes during less busy times. Details of busy times are displayed at each staffed station.
- At major stations, our Travel Centres enable you to buy tickets, get travel information and also purchase other travel services.
- Tickets can also be purchased from our authorised travel agents.

5.2 By telephone

Season tickets (Discounted Fare) can also be purchased over the telephone by calling our Customer Service Centre. We accept most major credit and debit cards. Please allow at least five working days for delivery of your tickets.

5.3 Tickets online

You can also buy your season rail tickets (Discounted Fare) online.

5.4 Penalty fares

Hyderabad Metro Rail System has a duty to its fare-paying passengers to ensure that no-one travels for free.

To help us achieve this, we operate a penalty fares scheme across our network.

If you travel without a valid ticket you may be liable to a penalty fare of Rs.100 or three times of the single fare from the originating station of the train to the next station at which the train stops (whichever is the greater).

6. Your journey

6.1 Getting a seat

We operate a 'walk-on' service, which means you can board any train provided you have a valid ticket. As a result, we cannot guarantee to provide a seat for you, especially during peak periods or during disruption.

6.2 Security

We work very closely with the local authorities to improve security at our stations, car parks and on our trains.

We aim to reduce levels of crime, trespass and vandalism and we are investing to achieve this. Initiatives include:

- (i) Teams of Travel Safe Officers, trained and co-ordinated by the Police
- (ii) Installation of CCTV at stations
- (iii) Installation of CCTV on our train fleet
- (iv) Lighting at stations and car parks
- (v) Help points at our stations
- (vi) Security guards at key locations.

More information can be found in the *Safety and security* section of our website.

6.3 Cycles

We welcome the opportunity to integrate rail and cycle travel by providing cycle parking at most of our stations.

Cycles are also welcome on our services, except during peak hours.

Our Guards do have the right to refuse a cycle if there is insufficient space available or where the cycles cannot be accommodated safely.

Our cycle policy is published in our timetable book and shows those services where cycles are not permitted.

Information can be found at staffed stations and from our Customer Service Centre, and in our *Travel information section*.

6.4 Smoking

Smoking is not permitted anywhere on the Rail System.

6.5 Lost Property

Our Lost Property office at is open from 0730 -1900 hours Monday to Saturday. Telephone the office on All property found on our services and at our stations is forwarded to our Lost Property office.

To make an enquiry, complete our Lost Property online form.

6.6 Service disruption

Unfortunately, things do sometimes go wrong, causing disruption that cannot always be foreseen or avoided. In these circumstances, we may have to introduce emergency timetables. We will aim to inform you in advance before these timetables come into operation, with notices at stations and by other appropriate media.

Other causes of disruption include:

- Emergency engineering work
- Trespass and vandalism
- Train breakdowns
- Accidents
- Security alerts.

Under such circumstances we may have to make changes to our services without giving prior warning to protect your safety and that of our staff. We will always try to minimise disruption, keep you informed and provide or recommend alternative means of travel.

If a problem occurs after your train journey has started, we will work hard to get you to your destination station or provide other transport arrangements. If your intended journey is no longer possible, we will do our best to get you back to an appropriate station.

All our trains are fitted with public address systems and most of our staff are linked by telephone systems. We aim to let you know what is happening.

7 Claims for delays and cancellations

7.1 Season Tickets (Discounted Fare) valid for one month or longer

‘Void’ day refunds

As a holder of a Season Ticket valid for one month or longer, we may provide you with the appropriate refund for exceptional days when there has been widespread serious, extended disruption and when no alternative (such as a bus link) has been provided. This is known as a ‘void’ day. In these cases, the period of disruption will be excluded from our performance statistics.

When we have declared a ‘void’ day we will tell you through ‘Track Record’ posters displayed at key stations.

When you renew your Season Ticket you will be advised by staff at your local ticket office to apply for ‘void’ day refunds if they have been declared. You will be given a

‘void’ day refund application form, which you can complete and submit along with your expired Season Ticket.

7.2 Punctuality and reliability discounts for Season Tickets (Discounted Fare)

We have certain performance standards for punctuality and reliability. If we fail to meet these standards, we will offer you a discount from the cost of your Season Ticket renewal. Discounts will be paid automatically at the time of renewal.

Delays and cancellations that are caused by incidents beyond the control of the rail industry are excluded from our performance results. Incidents that are beyond our control include security alerts, vandalism and trespass. We will display the number of trains affected on posters at key stations and also on our website.

(a) 5% discount

We will offer you a 5% discount if, on average, over the previous 12 months either punctuality has been more than 10% below the standard or reliability has been more than 5% below the standard.

(b) 10% discount

We will offer you a 10% discount if both punctuality and reliability are below these discount threshold levels.

To obtain your discount, you must renew your Season ticket within four weeks of the previous ticket’s expiry.

7.3 Other tickets and weekly seasons

We will treat all claims on their merits and give consideration to any problems you encounter. However, for your guidance, you can expect us to offer the following:

(a) Journey delay

If you are delayed for one hour or more, we will offer you vouchers to the value of at least 25% of the price paid for that journey. For return tickets this relates to the affected part of your journey.

(b) Journey not made

If the train you planned to catch is unexpectedly delayed or cancelled and you decide not to travel, we will give you an immediate full refund, if the ticket office is in a position to do so.

If you decide for other reasons not to make your journey, you may apply for a refund within 28 days of the ticket’s expiry. In most cases you will receive your refund immediately, however this does depend on the method of payment, value of the

refund and type of ticket. We may also charge a reasonable administration fee for such refunds.

If you bought your ticket through a travel agent you should return it to the agent who will arrange a refund for you.

Please note:

- We do not normally accept claims where trains are delayed and you were told about the delay before you bought your ticket and you still decided to travel.
- We do not accept claims when a delay is caused by factors beyond the control of the rail industry or which prevent safe operation, such as security alerts, severe weather conditions or actions by third parties; nor when we have published in advance an emergency timetable or alternative route caused, for example, by engineering work.

How to make your claim for delay compensation

Claim forms for compensation are available at all ticket offices or by contacting our Customer Service Centre.

Please send us your travel tickets to support your claim. This will also help to speed up your claim.

Completed claims should be sent to our Customer Service Centre.

8. Listening to your views

We carry out and analyse passenger survey research to provide information about what you think of different aspects of our service.

We hold regular Meet the Manager events, which enable you to speak directly to managers to put your views to them or ask them questions. Details of Meet the Manager events will be advertised on station posters, in our passenger magazine *e-motion*, through our Customer Service Centre and also online.

We will listen to your views and communicate through correspondence and by telephone. We have a specially trained Customer Service Centre team able to respond to you and we also liaise with passenger representative bodies and user groups that exist to protect your interests.

8.1 Making a comment or complaint

We welcome your comments, suggestions, complaints and praise about any aspect of our service. We also welcome comments about our Charter.

Senior managers monitor the number and type of complaints and comments that you make. They are also responsible for delivering continuous improvement to customer service. Your feedback can therefore help us to achieve this.

If you are commenting on a journey please remember to include your rail tickets and any other details, as this will help us to provide you with a quicker response.

8.2 Further information:

We have a full Customer Comments and Complaints Handling Procedure (CCCHP). Copies of our CCCHP can be obtained from our Customer Service Centre or from our website www.*****.

8.3 Contacting our Customer Service Centre

Please visit our *Contact us* section for details.

8.4 Our promised response times

If you write to us, you should hear from us within five working days of us receiving your communication.

However, it may take longer to provide a full reply (e.g. if an investigation is required) and if this happens we will send you an acknowledgement within five working days and reply within 20 working days.

If a full reply cannot be made within 20 working days we will contact you again to update you.

8.5 If you are unhappy with our reply

We will work hard to deal with your concerns to your satisfaction but if you are unhappy with our response please let us know.

Alternatively, you can approach the consumer courts or other similar fora set up under Applicable Laws.

SCHEDULE – O
(See Clause 22.3.1)

TRAFFIC SAMPLING

1 **Traffic sampling**

The Government may, in its discretion and at its own cost, undertake traffic sampling, pursuant to Clause 22.3, in order to determine the actual traffic on the Rail System. In particular, the Government may undertake traffic sampling for determining PHPDT. Such traffic sampling shall be undertaken through the Independent Engineer in the manner set forth below or in such manner as the Parties hereto may agree upon.

2 **Manual traffic count**

The Independent Engineer shall employ the required number of enumerators who shall count, classify and record all the Users as they pass by, and divide the survey into fixed time periods. The count stations shall be located near the Fare collection gates and Trains at all Stations of the Rail System. The survey shall be conducted continuously for a minimum of 24 (twenty four) hours and maximum of 7 (seven) days at a time. Special surveys may also be undertaken for determining the PHPDT and such surveys may be carried out for upto 4 (four) Peak Hours in a day for a continuous period of 7 (seven) days. The count period shall be 15 (fifteen) minutes with results summarised hourly. All surveys shall be conducted substantially in the manner specified in this Schedule - O or in such manner as the Parties may agree upon.

3 **Automatic traffic count**

For automatic traffic count to be conducted on intermittent (non-continuous) basis, the Independent Engineer shall use suitable and standardised equipment to classify and record the Users passing through the Fare collection gates and the gates of the Trains. For this purpose, the counter shall be checked with at least 1,000 (one thousand) Users to ensure that Users are being counted and classified correctly.

4 **Variation between manual and automatic count**

Average Daily Traffic (ADT) shall be determined separately by the aforesaid two methods and in the event that the number of Users, as counted by the manual method, varies by more than 1% (one per cent) of the number of such Users as counted by the automatic method, the manual and automatic count shall be repeated, and in the event of any discrepancy between the two counts in the second enumeration, the average thereof shall be deemed to be the actual traffic. For the avoidance of doubt, it is expressly agreed that the Government may, in consultation with the Concessionaire, adopt modified or alternative processes of traffic sampling for improving the reliability of such sampling.

SCHEDULE –P
(See Clause 23.1)

SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.
- 1.2 The Government shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-Q and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Government shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Government to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Government within 15 (fifteen) days of receiving the aforesaid list of firms. Upon receipt of such comments, if any, the Government shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “**Panel of Firms**”) and convey its decision to the Concessionaire.
- 1.3 The Government shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Government shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.
- 1.4 In the event that the Government shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-P shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

- 2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the

Government shall endeavour that payments to the Independent Engineer 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 Government and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Government.

- 2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Government in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period shall be borne equally by the Government and the Concessionaire.

3 Constitution of fresh panel

No later than 5 (Five) years from the date of this Agreement, and every 5 (five) years thereafter, the Government shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-P; provided that the Government may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Government 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; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.

SCHEDULE –Q
(See Clause 23.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

- 1.1 These Terms of Reference for the Independent Engineer (the “**TOR**”) are being specified pursuant to the Concession Agreement dated..... (the “**Agreement**”), which has been entered into between the Government and L&T Hyderabad Metro Rail Private Limited (the “**Concessionaire**”) for the Rail System on Miyapur to L.B Nagar corridor; Jubilee Bus Station to Falaknuma corridor and Nagole to Shilparamam corridor in city of Hyderabad on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.
- 1.2 This TOR shall apply to construction, operation and maintenance of the Rail System.

2 Definitions and interpretation

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

3 Role and functions of the Independent Engineer

- 3.1 The role and functions of the Independent Engineer shall include the following:
- (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (iii) review, inspection and testing of rolling stock as set forth in Paragraph 5;
 - (iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;
 - (v) review, inspection and monitoring of O&M as set forth in Paragraph 6;

- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (ix) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and
 - (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The role and functions of the Independent Engineer shall not include construction works comprising the Real Estate Development.
- 3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

- 4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Government and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.
- 4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Government and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Government within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and

construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

- 4.5 The Independent Engineer shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the rolling stock sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.6 Upon reference by the Government, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Rail System, and furnish its comments within 7 (seven) days from receipt of such reference from the Government.

5 Construction Period

- 5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Government and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.3 The Independent Engineer shall inspect the Construction Works and rolling stock (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and rolling stock with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Rail System or in the rolling stock. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Government and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Rail System more than once in a month if any lapses, defects or deficiencies require such inspections.
- 5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 5.5, the tests specified in the IRC Special Publication-47

- {Guidelines on Quality systems for Road Bridge (Plain, Reinforced, Pre-stressed and Composite Concrete)} and other relevant Manuals specified by the Government in relation to structures, buildings, track, equipment and rolling stock (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Engineer shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Engineer shall determine that completion of the Rail System is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Project Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Engineer shall review the same and send its comments to the Government and the Concessionaire forthwith.
- 5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a

recommendation to the Government forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

- 5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Government forthwith, recommending whether or not such suspension may be revoked by the Government.
- 5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Government and the Concessionaire of the same.
- 5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.
- 5.14 Upon reference from the Government, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Government to the Concessionaire.
- 5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation Period

- 6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Government and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Government and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Rail System, including Trains and rolling stock, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and

make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Rail System. The Independent Engineer shall send a copy of its O&M Inspection Report to the Government and the Concessionaire within 7 (seven) days of the inspection.

- 6.5 The Independent Engineer may inspect the Rail System more than once in a month, if any lapses, defects or deficiencies require such inspections.
- 6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Rail System is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
- 6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.
- 6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Government for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any track of the Rail System for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such track(s), and in case of delay, determine the Damages payable by the Concessionaire to the Government under Clause 17.7.
- 6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Rail System, the Independent Engineer shall review the same and send its comments to the Government and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6.12 Audit of Fare collection system

The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic Fare collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the Fare.

- 6.13 The Independent Engineer shall undertake traffic sampling, as and when required by the Government, under and in accordance with Article 22 and Schedule-O.

7 Termination

- 7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Rail System for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Engineer determines that the status of the Rail System is such that its repair and rectification would require a larger amount than the sum set forth in Clause 39.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.

- 7.2 The Independent Engineer shall inspect the Rail System once in every 15(fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 39, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Engineer, it shall make a report in reasonable detail and send it forthwith to the Government and the Concessionaire.

8 Determination of costs and time

- 8.1 The Independent Engineer shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 8.2 The Independent Engineer shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

- 9.1 When called upon by either Party in the event of any Dispute, the Independent Engineer shall mediate and assist the Parties in arriving at an amicable settlement.
- 9.2 In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Independent Engineer shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions specified in the Agreement.

11 Miscellaneous

- 11.1 The Independent Engineer shall notify its programme of inspection to the Government and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection.
- 11.2 A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Engineer to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Engineer thereon shall be furnished by the Independent Engineer to the Government forthwith.
- 11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Government along with its comments thereon.
- 11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including 'as-built' Drawings, and keep them in its safe custody.
- 11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Government or such other person as the Government may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Government.

SCHEDULE –R
(See Clause 27.1.1)

FARE NOTIFICATION

GOVERNMENT OF ANDHRA PRADESH MUNICIPAL ADMINISTRATION AND
URBAN DEVELOPMENT DEPARTMENT

The Urban Rail System (Collection of Fare by Concessionaires) Rules, 20**

In exercise of the powers conferred by section 81 of the Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act, 2008 (hereinafter referred to as the “Act”), and all other powers enabling him in this behalf, the Governor of Andhra Pradesh makes the following Rules for collection of fee for use of Urban Rail System, namely: -

1 Short title, commencement and application:

- (1) These Rules may be called the Urban Rail System (Collection of Fare by Concessionaires) Rules, 20**.
- (2) These Rules shall come into force on the date of their publication in the Official Gazette and shall apply to all concessions granted by the State Government after such date.

2 Definitions

- (1) In these Rules, unless the context otherwise requires,
 - (a) “**Act**” means the Andhra Pradesh Municipal Tramways (Construction, Operation and Maintenance) Act, 2008;
 - (b) “**appellate authority**” means any officer not below the rank of superintending engineer or equivalent designated as such by the Government;
 - (c) “**concession agreement**” means an agreement entered into between the Government and any person or persons for construction, operation or maintenance of a rail system for transportation in urban areas;
 - (d) “**concessionaire**” means a person who has entered into a concession agreement with the Government under the provisions of the Act;
 - (e) “**Government**” means the Government of Andhra Pradesh;
 - (f) “**rail system**” means the rail system that is constructed, operated or maintained under a concession agreement for transporting commuters in an urban area;

- (g) “**train**” means a body of one or more coaches that is hauled as a single unit for transporting users on the Rail System;
- (h) “**unauthorised collection**” means the collection of any amount not provided for in these Rules, by the concessionaire;
- (i) “**user**” means a person who uses the rail system or any part thereof on payment of fare;
- (j) “**WPI**” means the Wholesale Price Index as published by the Ministry of Industry, Government of India or any Index published in substitution thereof by the Government of India; and
- (k) “**Year**” means a period from 1st April of a year and ending on 31st March of the following year.
- (2) Words and expressions used herein but not defined in these Rules shall have the meaning respectively assigned to them in the Act.

3 Levy and collection of fare

- (1) There shall be levied and paid to the concessionaire by every user, a fare under and in accordance with the provisions of these Rules.
- (2) Every user, upon payment of fare shall be issued a ticket / token / smart card by the concessionaire.

4 Basic fare

- (1) Basic fare for travel on the rail system shall be as specified in column (3) below.

Serial No. (1)	Distance to be travelled (in km) (2)	Basic fare (in Rs.) (3)
1.	Upto 2	8
2.	More than 2 and up to 6	10
3.	More than 6 and up to 10	12
4.	More than 10 and up to 14	14
5.	More than 14 and up to 18	16
6	More than 18	19
7	Unlimited use for the day	40

- (2) Basic fare for parking at any designated parking area within a station of the rail system shall be as specified in column (4) below.

Serial No. (1)	Vehicle (2)	Time period of parking (3)	Basic fare (in Rs.) (4)
1.	Car	(a) Upto 2 hours (b) For every hour in excess of the first 2 hours	10 5
2.	Motorised 2-wheeler	(a) Upto 2 hours (b) For every hour in excess of the first 2 hours	4 2

- (3) The basic fare for parking specified in sub-rule (2) above shall be increased by 50% (fifty per cent) thereof for parking provided in the basement or on a floor above the ground floor.

5 Annual revision of basic fares

- (1) The basic fares referred to in Rule 4 shall be increased annually, without compounding, by 5% (five per cent) thereof for a period of 15 (fifteen) successive years commencing from April 1, 2014. The first increase of 5% (five per cent) hereunder shall take effect on April 1, 2015, and the last and fifteenth such increase shall be affected on April 1, 2029. Such increased rates shall be deemed to be the base rates for the purpose of these Rules.

Illustration:

For a rail system that is commissioned on April 1, 2015 the basic fare for a journey of less than 2 km shall be Rs. 8.40 per trip.

- (2) The applicable basic fare shall be revised annually with effect from April 1 each year to reflect the variation in Wholesale Price Index between the week ending on January 31, 2009 and the week ending on or immediately after January 31 of the year in which such revision is undertaken, but such revision shall be restricted to 60% (sixty per cent) of the increase in Wholesale Price Index.

The formula for determining the fare due and payable under these Rules shall be as follows:

$$\text{Fare} = b + \left(b \frac{WPI_B}{WPI_A} - b \right) \times 0.6$$

Where,

b is the basic fare determined for the rail system as per sub-rule 5(1) above;

WPI_B is the WPI of the week ending on or immediately after January 31 of the year in which such revision is undertaken ; and

WPI_A is the WPI of the week ending on January 31, 2009.

Illustration:

For a rail system commissioned on April 1, 2015, the annual revision on April 1, 2015 for travel up to 2 km shall be the sum of (i) basic fare as on April 1, 2014 under Rule 5(1) above, i.e. Rs. 8.40, and (ii) assuming an inflation of 20 % (twenty per cent) in WPI between the week ending on January 31, 2014 and the week ending on or immediately after January of 2015, 60% (sixty per cent) of such inflation, i.e. 12% (twelve per cent) of (i) above, amounting to Rs 1.01. The fare as on April 1, 2015 shall thus be Rs. 9.41 per user and shall be rounded to Rs.9.00 per user in accordance with Rule 13.

- (3) Notwithstanding anything to the contrary contained herein, if revision of fare shall fall due before completion of 6 (six) months from the date on which such fare was levied and collected, such revision shall be kept in abeyance until the completion of the aforesaid 6 (six) months.
- (4) Annual revision of fare under this Rule 5(1) and 5(2) above shall be effective from 1st April every year and no further notification shall be required for giving effect to such revision.

6 Peak and off-peak fare

- (1) Every concessionaire may, after obtaining prior written approval of the Government, which approval the Government may in its discretion deny, levy and collect a higher and discounted fare (the “**differential fare**”) for use of the rail system, during peak and off-peak hours respectively in accordance with this Rule 6:

Provided, however, that such differential fare shall not apply to users availing of a lower fare under Rule 9.

- (2) The concessionaire shall, for the purposes of these Rules, designate not more than 4 (four) hours in a day as peak hours and a period equal to twice the peak hours as off-peak hours. During peak hours, the concessionaire may levy and collect a premium of upto 25% (twenty-five per cent) on the applicable fare or such higher premium as the Government may by order permit. Simultaneously, with levy of such premium for peak hours, the concessionaire shall offer a discount during off-peak hours for an amount equal to the premium for peak hours. For the avoidance of doubt, the determination of differential fare shall be with reference to the time of entry of a user in the respective train.

- (3) If the determination and collection of differential fare results in an increase in the fare revenues of the concessionaire, then 80% (eighty per cent) of the additional revenue in each year resulting from the differential fare shall be deposited in a Safety Fund and used in accordance with provisions of the respective concession agreement. For the purposes of this Rule 6(3), additional revenue from differential fare shall mean the gross amount collected at differential fare pursuant to this Rule 6, less gross revenues which would have been collected at the applicable fare on footing that the option to levy and collect differential fare pursuant to this Rule 6 has not been exercised by the concessionaire.

7 Fare collection points

- (1) For collection of fare under these Rules, the concessionaire shall establish and operate ticket counters and ticket vending machines in accordance with the provisions of its concession agreement.
- (2) The Concessionaire may install fare collection gates for checking evasion of fares.

8 Remittance and utilisation of fare

The fare collected shall be appropriated by the concessionaire in accordance with and for the performance of its obligations under and in accordance with the provisions of the concession agreement.

9 Discounted rates for frequent users

- (1) Upon request from any person, the concessionaire shall issue a return ticket on payment of a sum equal to 180% (one hundred and eighty per cent) of the fare payable if it were to undertake a single one-way trip on the rail system. Such return pass shall entitle the user to undertake a return journey on the same day as the outward journey.
- (2) Upon request from any person, the concessionaire shall issue a daily pass on payment of a sum equal to twice the Fare payable if it were to undertake a single one-way trip on the longest route of the rail system. Such daily pass shall entitle the user to unlimited travel on the rail system for the date of issue.
- (3) The concessionaire shall, upon request from any person for issue of a weekly pass, issue such pass on payment of a sum equal to ten times the Fare payable if it were to undertake a single one-way trip on the selected section of the rail system. Such weekly pass shall entitle the user to unlimited travel on such section of the rail system for one week from the date of issue.
- (4) The concessionaire shall, upon request from any person for issue of a monthly pass, issue such pass on payment of a sum equal to forty times the Fare payable if it were to undertake a single one-way trip on the selected section of the rail system. Such

monthly pass shall entitle the user to unlimited travel on such section of the rail system for one month from the date of issue.

- (5) In addition to the above, the Government may prescribe any other scheme of discounted fares under these Rules.

10 Luggage

- (1) A user may carry upto 10 (ten) kg of luggage without any payment for such luggage.
- (2) A user may carry a cycle at any time other than peak hours without any payment for such cycle.
- (3) Users may, at any time other than peak hours, carry luggage in excess of 10 (ten) kilograms, but not exceeding 40 (forty) kilograms, upon payment of basic fare calculated at the rate of Rs. 1 (one) per kilogram, which rate may be revised by the concessionaire in accordance with rule 5; provided that any luggage which is hazardous, unhygienic or in any manner offensive to other users shall not be permitted on the train.

11 Increase in Fares due to increase in insurance premium

In the event of a significant rise in the risk premium for insurance on account of a change in the security environment, the concessionaire shall be entitled to recover 80% (eighty per cent) of such increase in premium from the users by means of a corresponding increase in fares with the prior written approval of the Government which approval shall not be unreasonably withheld.

12 Additional charge for evasion of fare

The concessionaire shall be entitled to levy and collect an additional sum equal to the greater of three times the applicable fare or Rs.100 from a person found to be evading payment of fare due. Such additional sum shall be deemed to be fare due and payable under these Rules and may be used for defraying the expenses on prevention of such evasion.

Provided that the concessionaire shall not be entitled to any reduction in its liability on account of any amount payable by it to the Government or to any other relief from or any claim against the Government for:

- (a) its failure to stop evasion of fares; and
- (b) its failure to collect fares prescribed under these Rules.

13 Rounding off of fares

Fares to be collected under these Rules shall be rounded off to the nearest Rupee.

14 Commencement of fare collection

Levy and collection of fares shall commence upon completion/ provisional completion of construction of the rail system for entry into commercial service, in accordance with the provisions of the concession agreement.

15 Display of fares

- (1) The concessionaire shall, near the entry point of each station, prominently display the applicable fares for information of users approaching from either side of the station.
- (2) The concessionaire shall from time to time, by written notice, inform the Government of the applicable fares and the detailed calculation thereof. Such information shall be communicated at least 30 days prior to the date of initial levy of fares or revision thereof, as the case may be.
- (3) The concessionaire shall, at least 15 days prior to the commencement of collection of fare or revised fare, as the case may be, publish a notice specifying the actual amount of fare to be charged from users, in at least one newspaper each in English and local language of the area and having a wide circulation in such area.

16 Unauthorised collection

- (1) In the event that a concessionaire collects from any person a sum of money not due and payable hereunder, the concessionaire shall be liable to refund to such person forthwith the amount so collected along with a sum computed @ 0.5 % (zero point five per cent) of the amount so collected, for each day from the date of collection till the date of refund, by way of damages. In the event that such amount together with damages computed in the manner as aforesaid is not paid to such person for any reason whatsoever, the same shall be deposited with the Government within a period of 15 (fifteen) days from the date of such collection.
- (2) Any user aggrieved with the collection of unauthorised fare, may lodge a complaint with the authorised representative of the concessionaire who shall, after hearing the Parties pass an order on such complaint within 30 (thirty) days of receiving the complaint and appeal, if any, against such order may be made to the appellate authority designated as such by the Government within 45 (forty five) days of the date on which the order of the authorised representative was received by such user. In passing an order under this Rule, the authorised representative or the appellate authority may, after giving an opportunity of hearing to the complainant and the concessionaire, direct the concessionaire to refund the excess payment and may also award damages for the inconvenience suffered by an applicant.
- (3) The concessionaire shall keep a record of all complaints received and action taken thereon with respect to the fare collection, and forward a copy on a fortnightly basis to the authorised representative of the Government.

- (4) The Government may assess the excess fare collection, if any, made by a concessionaire and take appropriate action for recovering the same from such concessionaire along with an additional sum equal to the 25% (twenty five per cent) of the excess fare collection. Such additional sum shall be deemed to be predetermined liquidated damages for assessment and recovery of the excess fare collection.

17 Power of Government to verify records

The Government shall have the power to verify, through any of its designated officers, the collection of fares and for this purpose, inspect any document, records, other information or reports of the concessionaire.

18 Exempted Users

The following categories of Users shall be exempted from payment of Fare:

- (i) Employees of the concessionaire on duty; and
- (ii) Security personnel on duty.

Principal Secretary to Government,
Municipal Administration &
Urban Development Department
Government of Andhra Pradesh.

SCHEDULE –S
(See Clause 31.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this theday of
20.....

AMONGST

- 1 L&T Hyderabad Metro Rail Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1-Q4-A1, Cyber Towers, Hitec City, Madhapur, Hyderabad-500081, Andhra Pradesh (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
- 2 (name and particulars of Lenders’ Representative) and having its registered office at acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
- 3 (name and particulars of the Escrow Bank) and having its registered office at (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
- 4 The Governor of Andhra Pradesh , represented by Principal Secretary to Government, Municipal Administration & Urban Development Department and having its principal offices at Metro Rail Bhavan, Saifabad, Hyderabad – 4, Andhra Pradesh (hereinafter referred to as the “**Government**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

- (A) The Government has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for development of Rail System comprising of the Miyapur to L.B Nagar Corridor (Corridor-I), Jubilee Bus Station to Falaknuma Corridor (Corridor – II) and Nagole to Shilparamam Corridor (Corridor – III) in the city of Hyderabad on design, build, finance, operate and transfer basis

(“**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Government or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“**Escrow Account**” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“**Escrow Default**” shall have the meaning ascribed thereto in Clause 6.1;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“**Payment Date**” means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

“**Sub-Accounts**” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Government, the Lenders’ Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Government, the Lenders’ Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Government, the Lenders’ Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Government with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Government, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

The rights of the Government, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Government, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6 Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Concessionaire

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Government;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fare levied and collected by the Concessionaire;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Rail System; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Government

The Government agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Government to the Concessionaire;
- (b) Revenue Shortfall Loan;
- (c) all Fare collected by the Government in exercise of its rights under the Concession Agreement; and
- (d) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Government shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- (a) all taxes due and payable by the Concessionaire for and in respect of the Rail System;
- (b) all payments relating to construction of the Rail System, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses incurred by the Government, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the

provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;

- (e) Concession Fee due and payable to the Government;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Government as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;
- (h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Rail System;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Government as due and payable to it by the Concessionaire pursuant to the Concession Agreement, repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;

- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Government.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Rail System, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Government may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 36 of the Concession Agreement. Any instructions given by the Government to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Government hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any

reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “**Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Government or the Lenders’ Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Government remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Government and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to

the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

9.1.1 The Concessionaire will indemnify, defend and hold the Government, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations

under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Government will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Government to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Government, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and

where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Hyderabad and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Government 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 Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

11.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 Alteration of terms

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

11.5 Waiver

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any

other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

THE COMMON SEAL OF L&T Hyderabad Metro Rail Private Limited 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:

SIGNED, SEALED AND DELIVERED For and on behalf of L&T Hyderabad Metro Rail Private Limited Concessionaire) by:

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

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

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

In the presence of:

1.

SIGNED, SEALED AND DELIVERED For and on behalf of SENIOR LENDERS by the Lenders' Representative:

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

SIGNED, SEALED AND DELIVERED For and on behalf of GOVERNMENT OF ANDHRA PRADESH by:

(Signature)

Principal Secretary to Govt.,
Municipal Administration & Urban Development
Department, Government of Andhra Pradesh,
Secretariat, Hyderabad -500 022,
Andhra Pradesh.
Fax 040-23388582

2.

SCHEDULE –T
(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Government and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-T.

2 Invitation for empanelment

2.1 The Government shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;
- (b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Government; and
- (d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs.25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Government and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

- 3.2 The Government shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

4 Consultation with the Concessionaire

The Government shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Government to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Government within 15 (fifteen) days of receiving the aforesaid panel.

5 Mutually agreed panel

- 5.1 The Government shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Government and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-T.

SCHEDULE –U
(See Clause 38.4)

VESTING CERTIFICATE

- 1 The Governor of Andhra Pradesh represented by Principal Secretary to Government, Municipal Administration & Urban Development Department (the “**Government**”) refers to the Concession Agreement dated (the “**Agreement**”) entered into between the Government and (the “**Concessionaire**”) for Rail System comprising of 3 (three) corridors in the city of Hyderabad on design, build, finance, operate and transfer (“**DBFOT**”) basis.
- 2 The Government hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Government shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Rail System shall be deemed to have vested unto the Government, free from any encumbrances, charges and liens whatsoever.
- 3 Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20 at Hyderabad

AGREED, ACCEPTED AND SIGNED
For and on behalf of
CONCESSIONAIRE by:

SIGNED, SEALED AND DELIVERED
For and on behalf of GOVERNMENT OF
ANDHRA PRADESH by:

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

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

In the presence of:

- 1.
- 2.

SCHEDULE –V
(See Clause 40.3.1)

SUBSTITUTION AGREEMENT

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

AMONGST

- 1 The Governor of Andhra Pradesh, represented by Principal Secretary to Government, Municipal Administration & Urban Development Department and having its principal offices at Metro Rail Bhavan, Saifabad, Hyderabad-4, Andhra Pradesh (hereinafter referred to as the “**Government**” which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns);
- 2 L&T Hyderabad Metro Rail Limited, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at 1-Q4-A1, Cyber Towers, Hitec City, Madhapur, Hyderabad-500081, Andhra Pradesh, (hereinafter referred to as the “**Concessionaire**” which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (name and particulars of Lenders’ Representative) and having its registered office at, acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

WHEREAS:

- (A) The Government has entered into a Concession Agreement dated with the Concessionaire (the “**Concession Agreement**”) for development of the Rail System comprising Miyapur to L.B.Nagar Corridor (Corridor-I); Jubilee Bus Station to Falaknuma Corridor (Corridor-II) and Nagole to Shilparamam Corridor (Corridor-III) in the city of Hyderabad on design, build, finance, operate and transfer basis (“**DBFOT**”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Government to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of

the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

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

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“**Financial Default**” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Government for assignment/transfer of the Concession as provided in this Agreement;

“**Notice of Financial Default**” shall have the meaning ascribed thereto in Clause 3.2.1; and

“**Parties**” means the parties to this Agreement collectively and “**Party**” shall mean any of the Parties to this Agreement individually.

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 ASSIGNMENT

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders' Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Government hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders' Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders' Representative shall not be entitled to operate and maintain the Rail System as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

- 3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Government for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of

such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Government to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Rail System in accordance with the provisions of Article 36 of the Concession Agreement, and upon receipt of such notice, the Government shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Government may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Government may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Government expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

- 3.3.1 Upon occurrence of a Concessionaire Default, the Government shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Government within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Government shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the

Concessionaire, the Government shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days.

3.4 Procedure for substitution

- 3.4.1 The Government and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Government under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Rail System including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Government under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Government for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the Government that all or any of such criteria may be waived in the interest of the Project, and if the Government determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Government to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Rail System in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Government has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Government, the Nominated Company shall be deemed to have been accepted. The Government thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Government, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this

Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.

3.5 Selection to be binding

The decision of the Lenders' Representative and the Government in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Government taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Government and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Government or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Government to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Government shall undertake Termination under and in accordance with the provisions of Article 37 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the Government is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Government may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realisation of Debt Due

The Government and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

6 DURATION OF THE AGREEMENT

6.1 Duration of the Agreement

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Agreement; or
- (b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.

7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Government and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Government will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Government to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Government, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss,

damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the Government, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Hyderabad and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Government 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 Government with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

9.4 Alteration of terms

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

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

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

9.7 Survival

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

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

9.12 Authorised representatives

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

9.13 Original Document

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

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

THE COMMON SEAL OF L&T Hyderabad Metro Rail Private Limited 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:

SIGNED, SEALED AND DELIVERED
For and on behalf of L&T Hyderabad Metro Rail Private Limited
(Concessionaire) by:

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

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS
by the Lenders' Representative by:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

- 1. _____
- 2. _____

SIGNED, SEALED AND DELIVERED
For and on behalf of GOVERNMENT OF ANDHRA PRADESH by:

(Signature)

Principal Secretary to Govt.,
Municipal Administration & Urban Development Department, Government of Andhra Pradesh, Secretariat, Hyderabad -500 022,
Andhra Pradesh.
Fax 040-23388582

SCHEDULE –W
(See Clause 5.4.1)

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS' AGREEMENT (the "**Agreement**") is made on this day of, 2010,

AMONGST

1. **THE GOVERNOR OF ANDHRA PRADESH** represented by Principal Secretary to Government, Municipal Administration & Urban Development Department and having its principal offices at Metro Rail Bhavan, Saifabad, Hyderabad-4, Andhra Pradesh (hereinafter referred to as the "**Government**" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of **One Part**;

and

2. Larsen & Toubro Limited, an existing Company within the meaning of Section 3 of the Companies Act, 1956 having its registered office at L&T House, Narottam Morarji Marg, Ballard Estate, Mumbai-400001 (hereinafter referred to as "**Private Participant**") (which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives and successors) of the **Second Part**;

and

3. L&T Hyderabad Metro Rail Private Limited a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 1-Q4-A1, Cyber Towers, Hitec City, Madhapur, Hyderabad-81, Andhra Pradesh (hereinafter referred to as the "**Company**" or the "**Concessionaire**", which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include its legal representatives, successors and permitted assign) of the **Third Part**.

The Private Participant, the Government and the Concessionaire are hereinafter collectively referred to as the "**Parties**" and individually as "**Party**". The Private Participant and the Government are collectively referred to as the "**Shareholders**" and individually as "**Shareholder**".

WHEREAS:

- A. The Government had procured the in-principle approval from Government of India (hereinafter referred to as "In-Principle Approval") for establishment of a rail system for public use at Hyderabad in the State of Andhra Pradesh (hereinafter referred to as

“Rail System” or “Project”), subject to the terms and conditions stipulated in the In-Principle Approval, and the Government decided to undertake development of the Rail System through private participation on Design, Build, Finance, Operate and Transfer (the **"DBFOT"**) basis.

- B. The Government invited proposals by its Request for Qualification No.155/MD/HMR/2009 dated July 24, 2009 (the **"Request for Qualification"** or **"RFQ"**) for short listing of bidders for construction, operation and maintenance of the Rail System on DBFOT basis and subsequently the Government had prescribed the technical and commercial terms and conditions, and invited bids (the **"Request for Proposals"** or the **"RFP"**) from the bidders shortlisted pursuant to the RFQ, for selection of the successful bidder who would have the right to incorporate a company to act as a special purpose vehicle to undertake the Project.
- C. The Private Participant is the Selected Bidder, which had bid, and was thereafter short listed and eventually selected by Government, pursuant to which the Government issued the Letter of Award No.13299/H1/2010 dated August 6, 2010 to incorporate the special purpose vehicle which would execute the Concession Agreement for undertaking the Project (the **"Concessionaire"**).
- D. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Government to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the concessionaire under the Concession Agreement and the Government has agreed to this request.
- E. As part of the Request for Proposal it was contemplated that the Government would hold one non-transferable Golden Share (as defined hereinafter), on terms and conditions as set out in this Shareholders' Agreement.
- F. The Government and the Private Participant are therefore desirous of setting forth in this Agreement, the terms and conditions to govern the relationships in their mutual capacity as the Shareholders of the Concessionaire and to record their respective rights and obligations in relation to the management and functioning of the Concessionaire and other matters incidental thereto.

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

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, (including any recitals, annexure, schedules or exhibit attached thereto), except where the context otherwise requires, the following words and expressions shall have the following meaning:

"Affected Party" shall have the meaning ascribed to the term in Clause 11.3 hereunder;

"Alternate Director" shall have the meaning ascribed to the term in Clause 5.7.1 hereunder;

"Board of Director(s)" or **"Board"** means the board of director(s) of the Concessionaire;

"Chairman" means chairman of the Board of the Company;

"Charter Documents" means the memorandum of association and articles of association of the Concessionaire, incorporating as appropriate, and consistent with, to the extent permitted by law, the terms and conditions of this Agreement;

"Companies Act" means the Companies Act, 1956, as amended from time to time, or any enactment substituting the said Companies Act;

"Concession Agreement" shall mean the Concession Agreement entered into between the Government and the Concessionaire with respect to the Project;

"Consequential Loss" shall have the meaning ascribed to the term in Clause 11.14 hereunder;

"Defaulting Party" shall have the meaning ascribed to the term in Clause 8.2.1 hereunder;

"Director" means a director on the Board of Directors of the Concessionaire;

"Equity Shares" means the fully paid up equity share of a par value of Rs.10 (ten) each of the Concessionaire;

"Golden Share" means the fully paid up equity share of a par value of Rs. 10 (ten) of the Concessionaire issued/ to be issued to the Government;

"Managing Director" means the whole time managing director of the Concessionaire;

"Project" shall have the meaning ascribed to it in Recital A;

"Proprietary Information" shall have the meaning ascribed to the term under Clause 9.1 hereunder;

"Reserved Matters" means the matters listed under Annex I hereto;

"Shareholder" or **"Shareholders"** shall have the meaning ascribed to the term in the preamble of this Agreement;

"Shareholders' Agreement" or **"Agreement"** means this shareholders' agreement;

"Third Party" means any entity not a Party to this Agreement;

"Transfer" shall include (i) any transfer or other disposition of such securities or voting interests or any interest therein, including, without limitation, by operation of Applicable Laws, by court order, by judicial process, or by foreclosure, levy or attachment; (ii) any sale, assignment gift, donation, redemption, conversion or other disposition of such securities or any interest therein, pursuant to an agreement, arrangement, instrument or understanding by which legal title to or beneficial ownership of such securities or any interest therein passes from one entity to another entity or to the same entity in a different legal capacity, whether or not for value; (iii) the granting of any encumbrance (whether by way of mortgage, pledge, lien, hypothecation or otherwise) or charge in or extending or attaching to such securities or any interest therein or any privilege or priority of any kind having the effect of security.

1.2 Interpretations

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the RFQ, the RFP, the Concession Agreement or the Companies Act, as the case may be, shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Companies Act.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2 EFFECTIVE DATE

Except for the provisions of Clauses 2, 3, 7, 9 and 10 which shall become effective immediately upon the execution hereof, the provisions of this Agreement shall

become effective upon the completion, to the satisfaction of the Government, of the following actions (such date being the effective date "**Effective Date**"):

- (i) The Concessionaire shall have resolved by way of special resolution, in an extra ordinary General Meeting of the Shareholders of the Concessionaire, alteration of the Charter Documents of the Concessionaire, as necessary, to reflect the terms of this Agreement;
- (ii) The Concessionaire shall have filed with the concerned Registrar of Companies, amended Charter Documents as above, as necessary, and provided the Government with the receipt issued by the said Registrar of Companies evidencing filing of the Chartered Documents amended as above;
- (iii) The Concessionaire shall have delivered and the Private Participant shall have caused the Concessionaire to deliver to the Government a certified true copy of all such resolutions and/or any other document(s) evidencing performance of the actions contemplated in this Clause.

3 CAPITAL STRUCTURE AND ISSUANCE OF THE GOLDEN SHARE

3.1 Issuance of the Golden Share to the Government

- 3.1.1 The Concessionaire hereby undertakes to issue and allot, and the Private Participant hereby agree to cause the Concessionaire to issue and allot to the Government, simultaneously with the execution of this Agreement, the Golden Share, for a consideration equal to the par value of such Golden Share, and deliver the share certificate representing the Golden Share to the Government.
- 3.1.2 The Concessionaire shall make all filings as may be required under the provisions of the Companies Act and comply with all other requirements of Applicable Laws, in connection with the issuance of the Golden Share.
- 3.1.3 The Parties agree that the nominee Director of the Government shall have a right of affirmative vote in the meetings of the Board of Directors of the Company, and the Government shall have a right of affirmative vote in the General Meeting of Shareholders, in respect of the Reserved Matters. For the avoidance of doubt, the rights of the Government under this Agreement shall be in addition to any other rights that the Government may have under the Concession Agreement or any other Project Agreement.
- 3.1.4 The Parties expressly agree that the Golden Share shall, unless otherwise provided for under this Agreement, have identical rights and privileges of Equity Shares, with respect to dividend and all other matters.

3.2 **Transfer restrictions**

- 3.2.1 Any Shareholder (other than the Government) may, subject to the provisions of this Agreement, and in compliance with the Applicable Laws, Transfer, whether directly or indirectly, all or any of its/their Equity Shares or their rights under this Agreement to a Third Party provided that (i) such Transfer shall not cause the Concessionaire to be in breach of the Concession Agreement; and (ii) such Third Party purchaser shall agree and undertake to be bound by the terms and conditions of this Agreement and executes a deed of adherence in the form and manner attached in Annex II ("**Deed of Adherence**").
- 3.2.2 It is hereby expressly clarified that where Private Participant is a special purpose vehicle established primarily for the purposes of holding Equity Shares in the Concessionaire (such Private Participant being an "**SPV PP**"), a Transfer of any shareholding in such SPV PP shall constitute an indirect Transfer of Equity Shares by the SPV PP for the purposes of this Agreement and be subject to the restrictions on Transfer of shares as set forth in this Agreement, including (i) the requirement of the execution of a Deed of Adherence by a third party transferee.
- 3.2.3 The Parties expressly agree that the Government shall not be entitled to Transfer the Golden Share at any time, save and except when a successor entity of the Government assumes the rights and obligations of the Government under the Concession Agreement.

4 **SCOPE AND OBJECTIVE OF THE CONCESSIONAIRE**

4.1 **Purpose of the Concessionaire and scope of this Agreement**

The purpose of the Concessionaire is to undertake and perform the obligations and exercise the rights of the Concessionaire in accordance with and subject to the provisions contained in the Concession Agreement.

4.2 **Shareholder commitments**

- 4.2.1 Each Shareholder hereby agrees to cooperate with each other Shareholder and with the Concessionaire and to use its reasonable efforts to the extent that it has the authority and ability to do so to promote the success of the Concessionaire: Provided, however, the Parties hereby expressly acknowledge and agree that the responsibilities and obligations of the Government shall be restricted and limited to the matters expressly set forth in the Concession Agreement: Provided further that, nothing contained in this Article 4.2.1 shall be construed as creating any obligation on the Government other than as expressly set forth in the Concession Agreement, nor will it imply any joint and several liability of the Government.

- 4.2.2 Each Shareholder hereby undertakes towards the other Shareholders and to the benefit of the Concessionaire:
- (a) To perform and observe all of the provisions of this Agreement and the Charter Documents; and
 - (b) Subject to Government's right of affirmative vote (which may be exercised through a nominee of the Government) in relation to the Reserved Matters, and without prejudice to the foregoing, to procure that (i) every person for the time being representing it in its capacity as Shareholder, and (ii) every person appointed as a Director in terms of this Agreement will exercise any power of vote or cause the power to vote to be exercised, at any meeting of the Shareholders or the Board of the Concessionaire, as the case may be, so as to ensure the approval of any and every resolution necessary or desirable to procure that the affairs of the Concessionaire are conducted in accordance with the Concession Agreement and otherwise to give full effect to this Agreement, and likewise so as to ensure that no resolution is passed which is not in accordance with the Concession Agreement and/or the provisions of this Agreement; provided, however, that except as expressly directed or as otherwise contemplated by any provisions in this Agreement, each Shareholder shall have full discretion on how to vote the Equity Shares which such Shareholder owns or on how to cause any person appointed by such Shareholder to act in operating the Concessionaire, subject only to Applicable Laws.
- 4.2.3 If any Director nominated by a Shareholder pursuant to Clause 5, for any reason refuses to exercise his discretion in accordance with the provisions of this Agreement, such Shareholder shall forthwith take all action within its power or control to substitute such Director.
- 4.2.4 The Parties agree that the Charter Documents shall, to the extent permissible under Applicable Laws, incorporate the provisions of this Agreement including without limitation Government's right of affirmative vote and to the extent that the Charter Documents are inconsistent with the Agreement, the Shareholders shall exercise their power as shareholders of the Concessionaire to ensure that the Charter Documents are amended to the extent permissible under Applicable Law to remove any such inconsistencies.
- 4.2.5 The Private Participant hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project, till such time as the Financial Close for the Project is achieved in accordance with the Concession Agreement.

5 MANAGEMENT AND THE BOARD OF DIRECTORS

5.1 Management

The Concessionaire shall be managed and governed under the overall superintendence, direction and control of the Board. The Board shall have overall authority with respect to development and management of the Concessionaire and the Project. The officers of the Concessionaire shall have the authority and responsibilities specified by the Board of Directors, consistent with the Charter Documents and this Agreement.

5.2 Composition of the Board

5.2.1 The Board composition shall be determined as under:

- (a) The Government shall at all times be entitled to nominate a person of its choice for appointment as a Director on the Board of the Concessionaire, and upon such nomination, the Concessionaire shall appoint such person as a non-retiring Director in accordance with the Applicable Laws.
- (b) Private Participant and Shareholders other than the Government shall have the right to nominate the remaining Directors.

5.2.2 The Shareholders hereby acknowledge and agree to vote their respective shareholding in the Concessionaire in such manner so as to ensure appointment of the nominee of Government and the Private Participant, as Directors from time to time

5.3 Chairman

The Parties hereby undertake and agree that the Private Participant shall have the right to nominate the Chairman of the Concessionaire, who shall be appointed by the Board.

5.4 Managing Director

5.4.1 The Private Participant shall also nominate the Managing Director of the Concessionaire, who shall, following a Board resolution, be appointed by the Board.

5.4.2 The Managing Director shall be responsible for day-to-day management of the Concessionaire and for implementing the Project. The Managing Director will exercise his powers subject to the overall superintendence, direction and control of the Board.

5.5 Qualification

The Directors need not hold any qualification shares in the Concessionaire.

5.6 Resignation and removal

Except where a Director is required under Applicable Law or the Charter Documents to vacate office, no Director shall be removed during the term for which he was elected without the consent of the Shareholder that recommended his appointment on the Board. Notwithstanding the foregoing, a Shareholder may ask for removal, substitution or recall for any reason, of any of the Directors nominated by such Shareholder and such Director shall be bound by the direction of removal, substitution or recall. Each Shareholder agrees to co-operate with the other Shareholders in convening a meeting of the Shareholders of the Concessionaire to effect such removal and to vote in favour thereof, if so required.

5.7 Alternate Director

5.7.1 A Director, other than the Managing Director, (the "**Original Director**") shall be entitled at any time and from time to time, to appoint any person to act as the Original Director's alternate ("**Alternate Director**") (and the Shareholders shall procure that the Board appoints such person as his alternate) and to direct the termination of the appointment of such Alternate Director (and the Shareholders shall procure that the Board terminates the appointment of such Alternate Director).

5.7.2 The Alternate Director shall be entitled, while holding office as such, to receive notices of meetings of the Board or any committee thereof to which the Original Director has been appointed, and to attend and vote as a Director at any such meetings at which the Original Director is not present and generally to exercise all the powers, rights (other than the right to appoint an Alternate Director as provided in Clause 5.7.1), duties and authorities and to perform all the functions of the Original Director. Further, such Alternate Director shall be entitled to be counted for the purpose of constituting quorum, exercise the vote and sign a written resolution on behalf of the Original Director at any meeting of the Board or any committee thereof and to the extent permitted by Applicable Laws, his signature, vote, presence and consent shall be deemed to be that of himself (as if he is a Director in his own right) and the Original Director for whom he is an Alternate Director.

5.8 Vacancy

If a vacancy in any such office should occur for whatever reason, or a Director is absent for a continuous period of 1 (one) month from the place where meetings of the Board are regularly held and no Alternate Director has been appointed in his place, then the Shareholder that nominated such Director shall be entitled to nominate a replacement Director, and the Shareholders agree to vote their Shares unanimously for the removal of such Director and election of such replacement Director.

5.9 Mode of conduct of Board meeting

Board meetings shall be held at least once every quarter at such places in India as the Board may determine and failing any such determination at the Concessionaire 's registered office located at 1-Q4-A1, Cyber Towers, Hitec City, Madhapur, Hyderabad-81, Andhra Pradesh. If and when permitted under Applicable Laws, a Director may participate in a Board meeting or a committee/sub-committee meeting of the Board by means of telephone, audio and/or video conferencing or other communication facilities, and a Director participating in such a meeting by such means shall be deemed for the purposes of this Agreement, to be present at that meeting.

5.10 Notice and Agenda for meeting

5.10.1 Unless the requirement of notice is waived by all Directors, a minimum of 14 (fourteen) days written notice (or such shorter period as all the Directors may agree) of the Board meetings shall be given to all Directors and their Alternate Directors. Each notice of a meeting of the Board shall contain, *inter alia*, an agenda specifying in reasonable detail, the matters to be discussed at the relevant meeting and shall be accompanied by all necessary written information.

5.10.2 The Board shall only transact the business set out in the agenda accompanying the notice to the Directors. Provided however that with the unanimous consent of all the Directors with Director nominated by Government in attendance and voting in favour, the Board may transact business that is not set out in the agenda.

5.11 Quorum for Board meetings

5.11.1 The quorum for the meetings of the Board or any adjournment thereof shall necessarily include the Director nominated by Government if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting if the Director nominated by the Government is not present at such meeting.

5.11.2 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

5.12 Committees of the Board

If the Board finds it necessary to constitute a committee or sub-committee, the Board shall determine the powers (including scope, termination, amendment of and withdrawal thereof) of such committee or sub-committee. The committee or sub-committee shall be subject to and be under the supervision of the Board. Notwithstanding anything to the contrary contained herein, the Government shall have the right to nominate its nominee to each and every committee and sub-

committee constituted by the Board: Provided, however, that no Reserved Matters shall be delegated to such committee and/or sub-committee.

5.13 Decisions

5.13.1 Subject to the provisions of the Companies Act, a resolution of the Board of Directors shall be adopted by the affirmative vote of the simple majority of the Directors present at a meeting at which a quorum of the Board of Directors is present. Provided, however, that all resolutions on the Reserved Matters to be passed in the meeting of Board of Directors of Concessionaire shall be subject to the affirmative vote of the Director nominated by the Government and no such resolution shall be passed if no such Director nominated by the Government is present and voting in favour of such resolution.

5.13.2 The Concessionaire or any of its Directors, officers, agents or representatives shall not undertake any Reserved Matter without the prior approval by the Board in the manner provided in Clause 5.13.1 above and any act done by the Concessionaire or any of its Directors, officers, agents or representatives without such prior approval shall be null and void.

5.14 Resolution by circulation

Subject to Applicable Laws and for matters other than Reserved Matters, resolutions of the Board may be passed by circulation, if the resolution has been circulated in draft, together with necessary papers, if any, to all the Directors, then in India or outside India, and has been signed by a majority of the Directors. Such resolutions may be signed by the Directors as single document or in counterparts.

5.15 Authority

Unless otherwise authorised by the Board, none of the Directors shall be empowered to bind the Concessionaire individually.

5.16 Disqualification of Directors

Subject to Applicable Laws, a Director shall not be deemed disqualified to serve by reason of his being officer, director or shareholder of any other body corporate.

5.17 Inspection and information

5.17.1 It is hereby agreed between the Parties that the Government shall have the right to examine the books, records and accounts to be kept by the Concessionaire and shall be entitled to receive all information, including monthly management accounts and operating statistics and other trading and financial information.

5.17.2 Without prejudice to the generality of Clause 5.17.1, the Concessionaire shall supply the Government with copies of:

- (a) audited accounts of the Concessionaire (complying with all relevant legal requirements); and
- (b) monthly/quarterly management accounts of each principal division of the Concessionaire; these shall include a consolidated profit and loss account, balance sheet and cash flow statement broken down according to the principal divisions of the Concessionaire including a statement of progress against the relevant business plan, a statement of any variation from the quarterly revenue budget and up-to-date forecasts for the balance of the relevant Accounting Year and itemising all expenditure in relation to the Concessionaire's capital programme entered into by each principal division of the Concessionaire during that period.

6 SHAREHOLDERS' RIGHTS AND OBLIGATIONS

6.1 General Meeting and matters requiring the approval of Shareholders

- 6.1.1 The Board may whenever it thinks fit convene a General Meeting of the Concessionaire. The Board shall also proceed to convene a General Meeting if so requisitioned by the Shareholders of the Concessionaire in accordance with the provisions of the Companies Act and the Charter Documents.
- 6.1.2 Notwithstanding anything to the contrary contained in this Agreement and the Charter Documents, no decision shall be made and no action shall be taken by or with respect to a Reserved Matter, which is subject to the affirmative vote rights of the Government as provided in Clause 3.1.3 above, unless approved by an affirmative vote of authorized representative of the Government. The Parties specifically agree that a resolution relating to the Reserved Matters shall be passed in a meeting of Shareholders only and not by way of circulation.
- 6.1.3 The quorum for any Shareholders meetings or any adjournment thereof shall necessarily include a representative of the Government if any Reserved Matter is to be considered in such meeting; and no Reserved Matter shall be taken into consideration at such meeting, if a representative of the Government is not present at such meeting.
- 6.1.4 All items of business transacted or decisions taken at meetings where the quorum is not so constituted shall be null and void.

7 UNDERTAKINGS, REPRESENTATIONS AND WARRANTIES

- 7.1 The Private Participant hereby warrants and represents to and for the benefit of Government and the Concessionaire that:
 - (a) It is duly organised and validly existing under law and has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof;

- (b) the execution and delivery by the Private Participant of this Agreement has been duly authorised by all requisite corporate and other action and will not contravene any provisions of or constitute a default under, any other agreement or instrument to which it is a party or by which it may be bound;
- (c) this Agreement and all such other agreements and written obligations entered into and undertaken in connection with the transactions contemplated hereby to which it is a Party, constitute or will constitute following the execution and delivery thereof valid and legally binding obligations of such Private Participant, enforceable against it in accordance with its respective terms, subject as to enforcement of remedies to applicable bankruptcy, insolvency, reorganisation and other laws affecting generally the enforcement of the rights of creditors and subject to a court's discretionary authority with respect to the granting of a decree ordering specific performance or other equitable remedies;
- (d) it is not insolvent and no insolvency proceedings have been instituted, nor threatened or pending by or against it;
- (e) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate has or may have a material adverse effect on its ability to perform its obligations under this Agreement; and
- (f) there are no actions, suits, claims, proceedings or investigations pending or, to the best of the Private Participant's knowledge, threatened in writing against it at law, in equity, or otherwise, whether civil or criminal in nature, before or by, any court, commission, arbitrator or governmental authority, and there are no outstanding judgments, decrees or orders of any such courts, commissions, arbitrators or governmental authorities, which materially and adversely affects its ability to perform its obligations under this Agreement.

7.2 The Private Participant and the Concessionaire hereby irrevocably undertake, warrant and represent to and for the benefit of Government that:

- (a) the rights vested in the Government under this Agreement and the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by the Private Participant or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Government herein and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

- 7.3 The Government hereby warrants and represents to and for the benefit of the Concessionaire and the Private Participant that it has all requisite legal power and authority to execute this Agreement and carry out the terms, conditions and provisions hereof.

8 TERMINATION

8.1 Termination

The Parties agree that in the event any of the Shareholders cease to hold, directly or indirectly, any Equity Shares of the Concessionaire, this Agreement shall stand terminated automatically vis-à-vis such Shareholder. Provided however, the obligations of such Shareholder under this Agreement relating to confidentiality (Clause 9) and dispute resolution (Clause 10) and such other provisions of this Agreement that by their nature are intended to survive, shall survive any termination of this Agreement.

8.2 Right to Terminate for Cause

- 8.2.1 In the event of occurrence of a material breach of any of the terms and conditions of this Agreement or any covenant, representation, warranty or agreement set forth herein ("**Material Breach**") on the part of a Shareholder (the "**Defaulting Party**"), any other Shareholders ("**Non-Defaulting Party**") may give written notice of the alleged breach ("**Breach Notice**") to the Defaulting Party.
- 8.2.2 A termination event ("**Termination Event**") shall be deemed to have occurred if such Material Breach, if reasonably capable of being cured, is not cured by the Defaulting Party within 30 (thirty) days of receipt of the Breach Notice ("**Cure Period**"), or if such Material Breach is not reasonably capable of being cured, forthwith upon issue of the Breach Notice.
- 8.2.3 On the occurrence of a Termination Event on the part of the Private Participant, the Government may, in its discretion, require the Private Participant to transfer all, but not less than all, of the Equity Shares held by it to the Government at the lower of the market value of Equity Shares or 25% (twenty five per cent) of the par value thereof; and the transfer of such shares shall take place at the registered office of the Concessionaire within 30 (thirty) days from the date of notice by the Government in this behalf.

9 CONFIDENTIALITY

- 9.1 The Parties hereby acknowledge and agree that each of them possess and will continue to possess information that has been created, discovered, developed, or otherwise known and owned by them, which information has commercial value in the business in which they are or may become engaged (the aforementioned information is hereinafter called "**Proprietary Information**"). The Parties, on behalf of

themselves, agree that during the terms of this Agreement and after the termination or expiration hereof, each of them will keep in confidence and trust all Proprietary Information received from the other Party, and they will not use or disclose any such Proprietary Information or anything directly relating to it without the written consent of the other Party(s).

9.2 In the event of the expiration or termination of this Agreement for any reason, the Parties shall promptly, at the direction of the owner of such Proprietary Information, cease to use, destroy or return to the owner all documents and data of any nature pertaining to the Proprietary Information owned by such Party, and will not keep or deliver to anyone else any documents or data of any description or any reproduction of any description containing or pertaining to any Proprietary Information.

9.3 This Clause shall not, however, apply to information which:

- (a) is or becomes publicly available without the fault of any Party;
- (b) was known to any Party on a non-confidential basis prior to disclosure;
- (c) is independently developed by any Party without use of the Proprietary Information;
- (d) is disclosed by the owner of such information to a Third Party without restrictions similar to those contained herein;
- (e) is disclosed in order to enable the sell-down/ draw-down of debt or to proposed Third Party transferees, provided that the recipient executes a confidentiality undertaking to use the information solely for that purpose;
- (f) is disclosed in order to comply with the requirements of Applicable Laws including any requirements for the stock exchange listing of the Concessionaire or any entity, which directly or indirectly, holds Equity Shares;
- (g) is disclosed to any of the consultants (legal, financial, technical or otherwise) of the Parties, provided that the recipient executes a confidentiality undertaking to use the information solely for the purpose disclosed.

9.4 The Shareholders agree with each other and the Concessionaire to use their, and to cause the Concessionaire to use its, best efforts to assure that all information disclosed in connection with the business of the Concessionaire and not otherwise generally available shall be kept confidential and shall not be revealed.

10 GOVERNING LAW AND CONSENT TO JURISDICTION; ARBITRATION

10.1 This Agreement and all questions of its interpretation shall be construed in accordance with the laws of India. Subject to Clause 10.3, the courts at Hyderabad shall have exclusive jurisdiction over this Agreement.

10.2 The Parties agree that they shall attempt to resolve through good faith consultation, all and any issue, 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 ("**Disputes**"), and such consultation shall begin promptly after a Party has delivered to the other Party a written request for such consultation: Provided that if such good faith consultations have not resulted in a resolution of the dispute within 60 (sixty) days of such consultations having commenced, the provisions of Clause 10.3 shall apply.

10.3 Arbitration

10.3.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to a sole arbitrator to be appointed by the Chief Justice of the Andhra Pradesh High Court. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.3.2 The arbitrator shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Hyderabad and the language of arbitration shall be English.

10.3.3 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 MISCELLANEOUS

11.1 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.2 Force Majeure

Notwithstanding anything to the contrary contained in this Agreement, it is hereby expressly agreed between the Parties that no relief shall be granted to any Party under this Agreement for, or on account of, Force Majeure.

11.3 Specific performance of obligations

The Parties to this Agreement agree that, to the extent permitted under Applicable Laws, the rights and obligations of the Parties under this Agreement shall be subject to the right of specific performance and may be specifically enforced against a defaulting Party. The Parties acknowledge that any breach of the provisions of this Agreement will cause immediate irreparable harm to the adversely affected Party ("**Affected Party**") for which any compensation payable in damages shall not be an adequate remedy. Accordingly, the Parties agree that the Affected Party shall be entitled to immediate and permanent injunctive relief, specific performance or any other equitable relief from a court of competent jurisdiction in the event of any such breach or threatened breach by any other Party. The Parties agree and stipulate that the Affected Party shall be entitled to such injunctive relief, specific performance or other equitable relief without (i) the necessity of proving actual damages; or (ii) posting a bond or other security. Nothing contained herein shall limit the Affected Party's right to any remedies at law or in equity, including without limitation the recovery of damages from the defaulting Party.

11.4 Entire Agreement

11.4.1 Subject to the provisions of the Clause 11.4.2, this Agreement, together with all Annexures, Schedules, Exhibits and attachments hereto, represents the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement and supersedes any prior agreement or understanding, written or oral, that the Parties may have had.

11.4.2 Nothing contained herein shall:

- (a) affect the provisions of the Concession Agreement;
- (b) prevent the Private Participant from having any other inter-se arrangements regarding their shareholding in the Concessionaire, provided that no such arrangements shall in any way affect the rights of the Government under this Agreement or under the Concession Agreement.

For the avoidance of doubt, it is clarified that in the event of a conflict between the provisions of the Concession Agreement and this Agreement, the provisions of the Concession Agreement shall prevail.

11.5 Amendments

Any modification, amendment, or waiver of any provision of this Agreement shall be effective if, but only if, in writing and signed in person or by an authorised representative of each Party.

11.6 Severability

If any article, clause, section or paragraph, or part thereof, of this Agreement or any agreement or document appended hereto or made a part hereof is invalid, ruled illegal by any court of competent jurisdiction, or unenforceable under present or future Applicable Laws, then it is the intention of the Parties that the remainder of the Agreement, or any agreement or document appended hereto or made a part hereof, shall not be affected thereby unless the deletion of such provision shall cause this Agreement to become materially adverse to any Party in which case the Parties shall negotiate in good faith such changes to the Agreement as will best preserve for the Parties the benefits and obligations under such provision.

11.7 Counterparts

This Agreement may be executed in two or more counterparts, and by each Party on the same or different counterparts, but all of such counterparts shall together constitute one and the same instrument.

11.8 Waivers

No failure by a Party to take any action with respect to a breach of this Agreement or a default by any other Party shall constitute a waiver of the former Party's right to enforce any provision of this Agreement or to take action with respect to such breach or default or any subsequent breach or default. Waiver by any Party of any breach or failure to comply with any provision of this Agreement by a Party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

11.9 No agency

This Agreement shall not constitute any Party as the legal representative or agent of another Party, nor shall any Party have the right or authority, to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of another Party.

11.10 No Third Party beneficiaries

Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any entity other than the Parties hereto (and their respective successors and

permitted assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained.

11.11 Independence of the Parties with respect of each other and of the Concessionaire

The Parties are and shall remain independent. None of the Parties shall be considered an agent of the other, nor shall they have authority to enter into any contract or any obligation for, or make any warranty or representation on behalf of the other, or the Concessionaire.

11.12 Arms length

All relationships between each Party of the one part, and the Concessionaire of the other part, shall be conducted at arms length and on competitive terms.

11.13 Encumbrance

The Parties agree that the Private Participant shall not be entitled to Encumber their shareholding in the Concessionaire other than in favour of or for the benefit of the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Rail System.

11.14 Consequential Loss

Notwithstanding anything to the contrary contained in this Agreement, in no event shall any Party, its officers, employees or agents be liable to any other Party (on the basis of contract, indemnity, warranty or tort including negligence and strict or absolute liability or breach of statutory duty or otherwise) for any matter arising out of, or in connection with, this Agreement in respect of any Consequential Loss suffered by such other Party. For the purposes of this provision, “**Consequential Loss**” means any indirect or consequential loss (including loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements, or liability to third parties) resulting from such breach and whether or not the Party committing the breach ought to have known, that such indirect or consequential loss would be likely to be suffered as a result of such breach and includes the payment or repayment of any amounts (or any acceleration thereof) to lenders or creditors of the aggrieved Party from time to time, but excludes death or personal injury resulting from the negligence of the Party liable, its officers, employees or agents.

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

THE COMMON SEAL OF L&T Hyderabad Metro Rail Private Limited 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:

SIGNED, SEALED AND DELIVERED
For and on behalf of
L&T Hyderabad Metro Rail Private Limited (Concessionaire) by:

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

SIGNED, SEALED AND DELIVERED
For and on behalf of Larsen & Toubro Limited (Private Participant) by:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

- 1.
- 2.

SIGNED, SEALED AND DELIVERED
For and on behalf of
THE GOVERNMENT OF ANDHRA PRADESH by:

(Signature)

Principal Secretary to Govt.,
Municipal Administration & Urban Development Department,
Government of Andhra Pradesh, Secretariat,
Hyderabad -500 022,
Andhra Pradesh.
Fax 040-23388582

Annex-I
(Schedule-W)

Reserved Matters

- (a) to alter or add to the provisions of the memorandum;
- (b) to alter or add to the articles of association;
- (c) to change the name of the Concessionaire;
- (d) to purchase the Concessionaire's own shares or specified securities;
- (e) to issue sweat equity shares;
- (f) to issue further shares without pre-emptive rights to non-members or to convert loans or debentures into shares;
- (g) to reduce the share capital;
- (h) to remove the registered office of the Concessionaire outside the limits of the State where it is located;
- (i) to commence any new lines of business;
- (j) to keep registers and returns at any other place than within city, town or village in which the registered office is situated;
- (k) to consent to a Director or his relative or partner or firm or private company holding an office or place of profit, except that of Managing Director, manager, banker, or trustee for debenture-holders of the Concessionaire;
- (l) to make inter-corporate-loans and investments or guarantee/security to be given, etc., if the aggregate amount thereof, exceeds the limit of 10%(ten per cent) of the Concessionaire's paid-up share capital;
- (m) to apply to a Court to wind-up the Concessionaire;
- (n) to wind-up the Concessionaire voluntarily;
- (o) for various other matters pertaining to the winding up of the Concessionaire; and
- (p) any other matter which is required by the Companies Act, 1956 to be passed by a special resolution of the shareholders of the Company.

Annex- II
(Schedule-W)

DEED OF ADHERENCE

This **DEED OF ADHERENCE** ("**Deed**") is executed this day of20....., by a company/ body corporate incorporated under the laws of India, with its registered office at (the "**Transferee**")

WHEREAS:

- A. By a Shareholders' Agreement dated ..., 20..... (the "**Shareholders' Agreement**") among Government, and the Concessionaire, the Shareholders agreed to a mutual distribution / regulation of their rights and liabilities as Shareholders of the Concessionaire.
- B. Clause 3.2.1(ii) of the Shareholders' Agreement requires, *inter alia*, that, concurrently with the transfer of shares in the equity capital by any Shareholder ("**Parent**") to any third party, such third party shall, as a pre-condition of such transfer of shares to it, execute this Deed and be bound by the Shareholders' Agreement.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. Definitions and interpretation

Capitalised terms used but not defined in this Deed shall, unless the context otherwise requires, have the respective meanings ascribed thereto in the Shareholders' Agreement.

2. Undertakings

The Transferee hereby acknowledges that it has heretofore received a copy of, and has read and understands the Shareholders' Agreement, the Concession Agreement and other Project Agreements, and covenants, agrees and confirms that it shall be bound by all provisions of the Shareholders' Agreement as if it was an original party thereto, including with respect to the rights and obligations of the transferor Party contained therein, and the Shareholders' Agreement shall have full force and effect on it, and shall be read and construed to be binding on it.

3. Governing law

This Deed shall be governed by and construed in accordance with the laws of the India. The terms and conditions of the Shareholders' Agreement in relation to the

provisions regarding arbitration and other terms and conditions shall be deemed to have been incorporated in this Deed.

By

Name and Title:

In the presence of:

Witness 1. _____

2. _____