



**GOVERNMENT OF KARNATAKA
INDIA**

**DEVELOPMENT OF
“BENGALURU INTERNATIONAL CONVENTION CENTRE”
WITHIN THE PROPOSED BENGALURU SIGNATURE BUSINESS
PARK SITUATED ADJOINING THE KEMPEGOWDA
INTERNATIONAL AIRPORT AT BENGALURU, KARNATAKA**

**ON
PUBLIC PRIVATE PARTNERSHIP BASIS**

**PART V
DRAFT CONCESSION AGREEMENT**

05 FEBRUARY, 2018



**Karnataka State Industrial & Infrastructure
Development Corporation Limited
4th Floor, East Wing, “Khanija Bhavan”,
#49, Race Course Road, Bangalore 560 001
www.ksiidc.com**

***(This draft Concession Agreement will be finalised in terms of RFP conditions
(including Addendum, if any), once the Selected Bidder is appointed and
meets the Pre-conditions of the Agreement)***

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PART-I
PRELIMINARY

DRAFT CONCESSION AGREEMENT

FOR

**DEVELOPMENT OF BENGALURU INTERNATIONAL CONVENTION CENTRE (BICC) ON
PUBLIC PRIVATE PARTNERSHIP (PPP) FORMAT**

This **CONCESSION AGREEMENT** (herein after also referred to as the '**Agreement**') for Development of Bengaluru International Convention Centre, situated in Devenahalli, Bengaluru Rural District in the State of Karnataka, is made on this the ____ day of _____, 2018 at Bengaluru, Karnataka

By & between

The Governor of Karnataka represented by the **Infrastructure Development Department** acting through the **Karnataka State Industrial and Infrastructure Development Corporation Limited**, a company established under the Companies Act 1956, being a fully owned Corporation of the Government of Karnataka, and having its Registered Office at 4th Floor, East Wing, Khanija Bhawan, No.49, Race Course Road, Bangalore, 560001, and represented herein by its Managing Director,(hereinafter referred to as the "**Authority**" or "**KSIIDC**" which expression shall, unless it be repugnant to the context or meaning thereof, include its subsidiaries, successors-in-interest and assigns) of the **FIRST PART**;

and

M/s _____, a company incorporated by the Selected Bidder, exclusively for the Project under the Companies Act, 2013, having its Registered Office at _____ (hereinafter referred to as the "**Concessionaire**" which expression shall, unless it be repugnant to the context or meaning thereof, include its successors-in-interest and permitted assigns) represented herein through Mr. / Ms. _____, the Authorised Signatory, as authorised [vide Board Resolution dated _____ or by Power of Attorney dated -----] executed in his / her favor of the **SECONDPART**;

and

M/s _____ having its Registered Office at _____, in its capacity as the "**Confirming Party**" to this Agreement (hereinafter referred to as the "**Selected Bidder**" which expression shall, unless the context otherwise requires, include its successors and permitted assigns) represented herein through Mr. / Ms. _____, the Authorised Signatory, as authorised [vide Board Resolution

dated _____ or by a Power of Attorney dated _____]executed in his favor of the **THIRDPART;**

or

The consortium of (i) M/s _____ (Lead Member) having its Registered Office at _____, (ii) M/s _____ having its Registered Office at _____, and (iii) M/s _____ having its Registered Office at _____, together in their capacity as the **"Confirming Party"** to this Agreement (hereinafter referred to as the **'Selected Bidder'** which expression shall, unless the context otherwise requires, include its successors and permitted assigns) duly represented through M/s _____, the Lead Member of the consortium, through its Authorized signatory Mr./Ms. _____, of the **THIRDPART;**

(Each of the parties of the FIRST and SECOND and THIRD parts are hereinafter, as the context may admit or require, individually referred to as a **"Party"** and collectively as the **"Parties"**).

WHEREAS

- A.** The Government of Karnataka (**"GoK"**) has decided to develop the proposed Bengaluru International Convention Centre (**"BICC"**) comprising of a main Convention Hall of minimum 6000 seating capacity, exhibition halls and Food Court along with other facilities / Project Components and related infrastructure in an integrated manner including Hotel(s), Retail, etc, on the Public Private Partnership (**"PPP"**) model (hereinafter referred to as the **"Project"** and more fully described in Article-2 of this Agreement).
- B.** KSIIDC has been mandated by the Infrastructure Development Department, GoK to be its Nodal Agency and to undertake the development of the proposed Project through PPP model on Design, Finance, Build, Operate and Transfer (the **"DFBOT"**) basis.
- C.** The Authority had accordingly invited Application vide its Request for Proposal dated 05th February, 2018 (the **"Request for Proposal"** or **"RFP"**) for undertaking the Project, wherein it had prescribed the qualification criteria and had shortlisted certain bidders including, inter alia, the Selected Bidder comprising _____ and _____ (collectively the **"Consortium"**) with _____ as its lead member (the **"Lead Member"**)).
- D.** As part of the RFP, the Authority had prescribed the technical and commercial terms and conditions, and invited bids from prospective Applicants / Bidders for undertaking the Project.
- E.** After evaluation of the Bids received, the Authority, had accepted the bid submitted by the Selected Bidder and after completing due approval processes, issued the Letter of Award No. ____ dated _____, 2018 (hereinafter called the **"LOA"**) to the Selected

Bidder requiring, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of issue thereof.

- F.** The Selected Bidder has since promoted and incorporated the Concessionaire, as a [wholly owned subsidiary company / joint venture company of the Consortium as per the Joint Bidding Agreement submitted as part of its Bid in response to the RFP] as a limited liability Company under the provisions of the Companies Act, 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for undertaking the Project.
- G.** By its letter dated _____, the Concessionaire has also joined in the said request of the Selected Bidder to the Authority 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 purpose hereof.
- H.** The Selected Bidder / Concessionaire has vide its letter dated _____, submitted the Performance Guarantee of Rs. _____ favouring the Authority, as per the conditions of the LoA and submitted its compliance to all other conditions of the LoA.
- I.** The Authority 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.
- J.** It is deemed necessary and expedient to enter into this Concession Agreement being these presents to record the terms, conditions and covenants of the said Agreement between the Parties.

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 & INTERPRETATION

1.1. Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in **Article-52**) 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. Interpretations

1.2.1. In this Agreement, unless the context otherwise requires,

- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, 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 and any other law in force in the place of the Project;
- 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) reference to “**development**” include, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” 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 hours 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 Karnataka are generally open for business;
- l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- m) reference 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 “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or

corporation carries on business including the seeking of liquidation, winding-up, reorganization, 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 (t) shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
 - u) any agreement, consent, approval, authorization, 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 authorized 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 Provisos and Schedules of or to this Agreement; reference to an Annex shall, subject to anything to the contrary specified therein, be construed as a reference to an Annex to the Schedule in which such reference occurs; and reference to a Paragraph shall, subject to any contrary specified therein, be construed as a reference to a Paragraph of the Schedule or Annex, as the case may be, in which such reference appears;
 - x) unless otherwise specified, any interest payable under this Agreement shall accrue on a monthly basis;
 - y) 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**").
 - z) 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 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 Authority and/or the Independent Engineer shall be provided free of cost and in 3 (three) copies, and if the Authority and/or the Independent Engineer is required to return any such

Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

1.3. Measurements and Arithmetic Conventions

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

1.4. Priority of agreements, clauses and schedules

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

- a) This agreement along with the Schedules to the Agreement;
- 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).)
- c) The LOA issued to the Selected Bidder;
- d) Written addenda to the RFP;
- e) The RFP;

1.4.2. Subject to 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 Schedule's, 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:

- (i) Development of the Project on the Project Site set forth in **Schedule-A** including the Project Facilities comprising “**Core Minimum Development Obligations (CMDO)**”, “**Other Minimum Development Obligations (OMDO)**” and other “**Optional Permissible Facilities**” as specified in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications & Standards set forth in **Schedule-D**.
- (ii) Development of the **CMDO** as specified in **Schedule-B** within **24 (twenty four) months** from the date of this Agreement, in conformity with the Specifications and Standards set forth in **Schedule-D**, including design, conceptualise, finance, build, integrate, install, test & commission;
- (iii) Development of the **OMDO** within **48 (forty eight) months** from the **Appointed Date**, in conformity with the Specifications and Standards set forth in **Schedule-D**, including design, conceptualise, finance, build, integrate, install, test & commission;
- (iv) Development of the other **Optional Permissible Facilities** as specified in **Schedule-B** and **Schedule-C** by any such time within the Concession Period on its discretion, and in conformity with the applicable bye-laws, rules and regulations and Specifications and Standards set forth in **Schedule – D**; (for purpose of clarity, it is confirmed that no other development other than that specified in the CMDO, OMDO or Optional Permissible Facilities, shall be permissible in the Project Site);
- (v) Operation, maintenance and management of the Project / Project Facilities developed on the Project Site in accordance with the provisions of this Agreement;
- (vi) Performance and fulfillment 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.
- (vii) Hand over back the Project / Project Facilities and Project Site to the Authority at no cost to the Authority and free from any liens, claims and Encumbrances

and in a good operable working condition, upon expiry of the Concession period by efflux of time or an early Termination of this Agreement, as the case may be.

(viii) The Concessionaire shall undertake its obligations at its own cost and risk.

2.2. Integrated Development

The Project is an integrated development and the Concessionaire can only license/ sub-license the developed Project Facilities or enter into Project Contracts for O&M of any or all of the Project Facilities in accordance with the provisions hereof and does not have the right to part with the Project Site as a whole or in parts by way of license/ sub-license of the land or the Project Site. Further, the Concessionaire shall not have any right to create any Encumbrance and/or convey/transfer/assign any right/title/interest in any manner in the Project Site.

2.3. Sole Purpose of the Concessionaire

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

ARTICLE - 3

GRANT OF CONCESSION

3.1. The Concession

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, Applicable Laws and the Applicable Permits, the Authority hereby grants to the Selected Bidder / Concessionaire the Concession set forth herein including the exclusive right, licence, and authority to undertake, the development, design, engineering, financing, procurement, construction, completion, commissioning, implementation of the Project at the Project Site, marketing, management, administration and operation and maintenance of the Project / Project Facilities, on a commercial format, and exercise and/or enjoy the rights, powers, privileges, concessions and entitlements as set forth in this Agreement (collectively the “**Concession**”) for a period of 30 (thirty) years plus the Construction Period of CMDO / OMDO (subject to maximum period of 48 months) commencing from the Appointed Date, and the Selected Bidder/Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein. For the avoidance of doubt, the Concession Period shall include the Construction Period.

Provided that, subject to fulfilling the obligations and performance standards as per provisions of the Concession Agreement inter alia including, but not limited to, clause 33.3 without any default during the Concession Period, the Concessionaire shall any time no earlier than 3 (three) years, but no later than 1 (one) year prior to completion of the aforesaid Concession Period of 30 years plus the Construction Period of CMDO / OMDO (subject to maximum period of 48 months) commencing from the Appointed Date, upon issuing a notice to this effect to the Authority, be entitled to an extension of another term of 30 (thirty) years in the Concession Period on the terms and conditions set out herein under and in accordance with the provisions of Clause 42.5. However, this extension shall be subject to:

- (i) The due compliance of the terms and conditions of the Concession Agreement by the Concessionaire; and
- (ii) The Concessionaire should not have been in material breach of the terms and conditions of the Concession Agreement during the Concession Period.

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:

- (i) Right of Way, access and licence to the Project Site for the purpose of and to the extent conferred by the provisions of this Agreement;

- (ii) Design, finance, develop & construct the Project, market, manage, administer, operate and maintain the Project / Project Facilities;
- (iii) determine, demand, charge, collect, retain and appropriate Project Revenues in respect of the Project Facilities and regulate the use thereof by third parties;
- (iv) determine, demand, collect and appropriate fee based on market driven rates from Users liable for payment of Fee for using the Project / Project Facilities or any part thereof and refuse entry to any User if the fee due is not paid;
- (v) grant licences / sub-licences/ Contractors (of developed Project Facilities) or enter into franchising, management service, or other suitable arrangements on mutually agreed conditions (the “**Contractual Arrangements**”) for a period less than or coterminous with the Concession Period with any Persons of its choice for carrying on its business of constructing, managing, marketing, operating and maintaining the Project Facilities, subject to provisions of clause 10.11 of this Concession Agreement;
- (vi) exercise all rights and remedies available under the Applicable Laws to recover the Project Revenues, including suspension, termination or cancellation of the applicable service to the relevant defaulting user, including licensees and Contractors, provided that the same shall be in compliance with the requirements of the Applicable Laws, terms of Applicable Permits or mandatory requirements of Government Authorities, if any, and Good Industry Practice in this behalf;
- (vii) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations under this Agreement;
- (viii) appoint Contractors on its behalf to assist in fulfilling its obligations in relation to the Project Facilities insofar as the development and construction of the Project is concerned;
- (ix) neither assign, transfer or sublet or create any Encumbrances on the whole or any part of the Project Site nor transfer, lease or part possession thereof, save and except as expressly permitted under this Agreement and the Substitution Agreement, provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors, to enter into Contractual Arrangements in accordance with the provisions hereof;
- (x) apply for and obtain all requisite Applicable Permits for the development of the Project Site and Project Facilities / Project Assets, including submissions for clearance from Airports Authority of India (AAI), PCB / EIA Clearances, plans for construction of building/s and other structure/s thereon for such uses, licenses

from respective statutory / regulatory authorities / bodies / agencies for putting to use the project facilities for purposes as described herein;

- (xi) perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement and carry out such other activities incidental to the foregoing in a manner which is considered to be safe, efficient, economic & environment friendly and in accordance with Applicable Laws & Good Industry Practice;
 - (xii) Make timely payments to the Authority towards all dues including Concession Fee, Revenue Share, etc.;
 - (xiii) transfer and hand over, on the Transfer Date, the Project Site, Project / Project Facilities along with the Project Assets to the Authority or its nominated agency in a good operable working condition at no cost, free from any liens, claims, Encumbrances, in a good working condition and in accordance with the provisions hereof.
- 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, operations and maintenance of other Optional Permissible Facilities subject to the conditions stipulated in **Schedule-B, Schedule-C** and **Schedule-D**, and to exploit such development for commercial purposes in accordance with the provisions of Article-29, (the “**Optional Permissible Facilities**”) with the right to lease, sub-lease, sub-licence any or all parts thereof by means of Project Contracts, subject to the condition for maximum permissible development as stipulated in **Schedule-C** of this Concession Agreement and the provisions of Article-33, (the “**Concession Fee & Revenue Share**”)
- 3.1.4 The rights provided pursuant to the grant of the Concession are of a contractual nature only and shall not amount to any lease of or other interest in land, or any building or other structure or facility constructed or to be constructed on, under or over the Project Site, other than as provided in Clauses 3.1.1, 3.1.2 and 3.1.3 hereof.

ARTICLE - 4

CONDITIONS PRECEDENT

4.1. Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 30, 39, 49 and 52, 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**"). Provided, however, that Party may grant waiver from satisfaction of any Condition Precedent by the other Party in accordance with the provisions of clauses 4.1.2 or 4.1.3 as the case may be, and to the extent of such waivers, that Condition Precedent shall be deemed to be fulfilled for the purposes of this clause 4.1.1.

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority, prior to the execution of this Agreement, in accordance with Article-9, at any time within 90 (ninety) days from the date of the LOA or on any earlier date acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority prior to the Appointed Date shall be deemed to have been fulfilled when the Authority shall have:

- (i) procured for the Concessionaire the Right of Way to the site in accordance with the provisions of Clauses 10.3.1 and 10.3.2;
- (ii) handed over the Project Site on 'as is where is basis' and free of all Encumbrances to the Concessionaire along with the Right of Way and license for the purpose of and to the extent conferred by the provisions of this Agreement;
- (iii) Appointed an Independent Engineer and a Nodal Officer as per terms hereof;
- (iv) procured the Applicable Permits relating to land use for the taking up the Project on the Project Site.
- (v) Obtained needful approvals / authorization to the Authority from the Government of Karnataka, pertaining to the development of Project as per terms & conditions of this Agreement

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 180 (one hundred and eighty) days, for fulfillment of any of the Conditions Precedent set forth in this Clause 4.1.2.

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

- (a) executed and procured execution of the Escrow Agreement
- (b) executed and procured execution of the Substitution Agreement
- (c) executed and procured execution of the Shareholders' Agreement;
- (d) prepared and submitted the Detailed Project Report to the Authority;
- (e) procured all the Applicable Permits specified in Part-I of **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 Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (g) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 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 Authority {from the Consortium Members, their respective} confirmation, in original, of the correctness of the representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
- (i) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- (j) prepared, finalised and procured approval of the Independent Engineer on the Detailed Project Report in accordance with the provisions of this Agreement;

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion and without prejudice to anything stated hereunder, waive and/or extend the fulfillment of any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority, may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit based on the recommendation of the Independent Engineer.

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 Authority

In the event that (i) the Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 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 Authority shall pay to the Concessionaire, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfillment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period specified in that clause, and (ii) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum amount equal to Bid Security, and upon reaching such maximum, the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement. Provided that in the event of delay by the Authority in procuring fulfillment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the authority shall have procured fulfillment of the Conditions Precedent specified in Clause 4.1.2.

Provided, however, in the event of the Concessionaire having completed all needful documentation as necessary for applying for the Applicable Permits specified in Part-I of Schedule-E and having made all needful & complete applications to the respective statutory / regulatory authorities within a period of 120 (one hundred and twenty) days from the date of this Agreement, the Authority may in its discretion and subject to such terms and conditions as it may deem fit allow extension of time of such duration as the Authority may deem appropriate for seeking the approvals from statutory / regulatory authorities, without levy of any Damages until the date the Applicable Permits are accorded by the respective statutory / regulatory authorities, provided all other conditions precedent are fulfilled or waived.

4.4 Commencement of Concession Period

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the “**Appointed Date**” which shall be the date of Commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire may, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project.

Further, unless extended as per provisions of this Agreement, each Party shall make all reasonable endeavors to satisfy the Conditions Precedent which shall be earlier of the date falling at the expiry of 180 (one hundred eighty) days from the date of this Agreement or the date by which all project related clearances have been procured by the Concessionaire (herein the ‘**Appointed Date**’) 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.

Notwithstanding anything to the contrary stated in this Agreement, in the event the Concessionaire fails to procure the fulfillment of the Conditions Precedent in terms hereof by the Appointed Date and the Authority has not expressly waived, fully or partially, such conditions relating to the Concessionaire, the Authority may, in its sole and exclusive discretion, extend the Appointed Date for allowing the Concessionaire to procure fulfillment of its Conditions Precedent, on reasonable grounds based on the recommendation of the Independent Engineer.

4.5 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.2, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the date falling at the expiry of 180 (one hundred eighty) days from the date of this Agreement or the extended period provided by the Authority in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall also be encashed and appropriated by the Authority as Damages thereof.

Provided, however, in the event of the Concessionaire having completed all needful documentation as necessary for applying for the Applicable Permits specified in Part-I of Schedule-E and having made all needful & complete applications to the respective statutory / regulatory authorities within a period of 120 (one hundred and twenty) days from the date of this Agreement, and in the event the Appointed Date does not occur before the extended period provided by the Authority in accordance with this Agreement due to delay in receipt of Applicable Permits where the reasons for delay, in

the opinion of the Authority are not attributable to the Concessionaire, the Authority may in its discretion and subject to such terms and conditions as it may deem fit allow one more extension of time of such duration as the Authority may deem appropriate to this clause 4.5, for seeking the approvals from statutory / regulatory authorities.

Without prejudice to the provisions of this Clause 4.2 and 4.3, if the Conditions Precedent set out above have not been satisfied in full or not been waived by the date falling 270 (two hundred seventy) days after the date of this Agreement, the Authority shall, subject to this Clause 4.5, have the right to terminate this Agreement by giving fifteen (15) days notice in writing to the other Party and upon expiry of such notice this Agreement shall terminate and the Performance Security of the Concessionaire shall also be encashed and appropriated by the Authority as Damages thereof.

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 (as per the specified Project Concept / Theme & preliminary / conceptual Master Plan prepared by the Authority through its consultant), engineering, procurement, construction, operation and maintenance of the Project / Project Facilities in accordance with the provisions of this Agreement, and observe, fulfill, 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 The Concessionaire shall, at all times during the subsistence of this Agreement, comply with all the conditions stipulated in **Schedule-A, Schedule-B, Schedule-C and Schedule-D**.
- 5.1.4 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.
- 5.1.5 The Concessionaire shall, from time to time, undertake renovation or upgradation of the Project Facilities, in accordance with the provisions of this Agreement and Good Industry Practice
- 5.1.6 Save and except as expressly provided in this Agreement, the Concessionaire shall at all times during the subsistence of this Agreement, pay all taxes, levies, duties, cesses and all other statutory charges, dues, assessments or outgoings payable in respect of the Project Site / Project / Project Facilities or in respect of the materials stored therein which may be levied by any Government Instrumentality.
- 5.1.7 In case the Concessionaire is a SPV comprising a Consortium, the Lead Member of the Consortium shall be primarily responsible for all the obligations under this Agreement, notwithstanding the fact that all the members of the Consortium are jointly and severally liable for all the obligations under this Agreement.
- 5.1.8 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 (including any other than those set forth in Clause 4.1.3 and **SCHEDULE-E**), 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 Project / Project Facilities;
- (c) perform and fulfill its obligations under the Financing Agreements;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure 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;
- (f) not do or omit to do any act, deed or thing which may in any manner violate any of the provisions of this Agreement;
- (g) procure that all facilities and amenities within the Project Facilities are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
- (h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) make timely payments due to the Authority including the Annual Concession Fee and Revenue Share in accordance with the provisions of this Agreement;
- (j) appoint only persons with adequate experience and reputation of developing / operating a successful convention centre in India or abroad or a 5 Star Hotel in India or abroad for a minimum period of 10 years, as the Managing Director / Chief Executive Officer of the Concessionaire;
- (k) provide all assistance to the Independent Engineer and Nodal Officer as they may require for the performance of their duties and services;

- (l) obtain and maintain in force from the Date of this Agreement all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (m) indemnify the Authority against all action, suit claims, demands, proceedings and any loss or damage or costs or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement;
- (n) Hand over the Project / Project Facilities and Project Site back to the Authority at no cost to the Authority and free from any liens, claims and Encumbrances and in a good operable working condition, upon expiry of the Concession period by efflux of time or an early Termination of this Agreement, as the case may be.

5.2 Obligations relating to Project Contracts

- 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 Contracts or any other agreement, and no default under any Project Contracts or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Contracts, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. The review and comments of the Authority shall be final, conclusive and binding on the Concessionaire. Within 7 (seven) days of execution of any Project Contractor amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 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 Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it

shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.

- 5.2.4 The Concessionaire shall procure that each of the Project Contracts contain provisions that entitle the Authority to step into such Agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Contracts shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Contracts and undertakes that it shall, in respect of each of the Project Contracts, procure and deliver to the Authority and acknowledge undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Contracts, 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 Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of all EPC Contractors or O&M Contractors and execution of all EPC Contracts or O&M Contracts shall be subject to prior approval of the Authority from the review of relevant expertise, as well as national security and public perspectives (if applicable), the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to review of relevant expertise as well as national security and public perspectives (if applicable), and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire 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 Authority.
- 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 5% (Five percent) of the total Equity of the Concessionaire; or

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

shall constitute a Change in Ownership requiring prior approval of the Authority, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to technical & financial capacity of the acquirer as well as national security and public interest perspectives (if applicable), and the Authority shall endeavor to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 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, 2011 or any statutory re-enactment thereof as applicable 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 situated in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 5% (Five 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 concurrence from Authority on major changes

5.4.1 The Concessionaire shall not undertake or permit any changes pertaining to (i) induction of new shareholders, (ii) dilution of shareholding by original shareholders subsequent to expiry of Lock-in Period, (iii) any change in the development plan from that approved in the Detailed Project Report (DPR) approved by the Authority, except with the prior written approval of the Authority.

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

- (a) it has provided an irrevocable undertaking that the rights vested in the Authority 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;
- (b) it has provided an irrevocable undertaking that any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Authority herein and that the successors-in-interest, assigns and substitutes of the Concessionaire shall be bound by such undertaking;

5.5 Obligations relating to Convention & Exhibition Associations

5.5.1 The Concessionaire agrees and undertakes that within 1 year of COD1, it shall procure the memberships in the name of the Project / Project Facilities, of at least 2 (two) associations respectively in each Category, from the following Associations, that shall be kept valid with timely renewals (if applicable) during the Concession Period.

(a) Relating to the Convention Centre:

1. International Congress & Convention Association (ICCA)
2. India Convention Promotion Bureau (ICPB)
3. International Association of Congress Centers (AIPC)

(b) Relating to the Exhibition Halls:

1. International Association of Exhibitions and Events
2. Global Association of Exhibition Industry
3. Asian Federation of Exhibition & Convention Associations
4. Venue Owners of Indian Exhibition Industry Association

5.5.2 The provisions of clause 5.5.1 shall apply, mutatis mutandis, to the renewal of Applicable Permits until termination of this Agreement.

5.6 Procurement of Goods and Services

- 5.6.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the Construction and operations of the Project in a fair and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall make available the policy to the Independent Engineer / Authority as and when requested from time to time. The Policy shall also include the principles and procedures to be followed for licencing, sub-licencing or grant or allocation of any built-up space, buildings or privileges to private entities.
- 5.6.2 For procurement of contracts, goods or services and for award licences, sub-licences or any other rights or privileges, where the consideration exceeds Rs. 1,00,00,000 (Rupees One Crore only) or as specified by the Income Tax Act or the Companies Act 2013 or any other enactment in India or its amendments from time to time, whichever is lower, in any Accounting Year (collectively the “**Contracts**”), the Concessionaire shall invite offers through competitive bidding as per its procurement policy specified in clause 5.6.1 and shall select the awardees in accordance with the policy specified in 5.6.1. For the avoidance of doubt, the Parties agree that the Concessionaire may, in its discretion, pre-qualify and short list the applicants in a fair and transparent manner for ensuring that only experienced and qualified applicants are finally selected in a manner that is commercially prudent and protects the interests of the Users. The Parties further agree that the Concessionaire shall not enter into a Contract with any associated Firm except written consent of the Authority, which consent shall not be unreasonably withheld. The Parties also agree that before granting any consent hereunder, the Authority shall be entitled to seek such information as it may reasonably require in relation to the Contract and the Associated Firm with whom the Contract is proposed to be executed and in the event the Authority does not approve or reject the proposal within 30 (thirty) days of the date on which the required information has been provided, it shall be deemed that the Authority has no objection to such Contract.

Explanation:

As used in this Clause, the expression “Associated Firm” shall have the same meaning as ascribed to the expression “Associate”, provided that the reference to 50% (fifty per cent) of voting shares in respect of an Associate shall be read as 10% (ten per cent) of voting shares in case of an Associated Firm.

5.7 Obligations relating to employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their subcontractors shall be

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

5.8 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. Further, the Concessionaire shall ensure that preference for employment is as per the State Government employment policies.

5.9 Obligations relating to aesthetic quality of the Project Facilities

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the Project / Project Facilities and achieve integration of the Project with the character of the surrounding landscape through both appropriate design and sensitive management of all visible elements. The Concessionaire shall engage professional architects of repute for ensuring that the Project Design meets the stipulated aesthetic standards as well as the conditions set forth in this Concession Agreement. For the avoidance of doubt, the Concessionaire shall be required to design the Project / project Facilities such that it complies with the Theme and Concept specified by the Authority and is as per the Design Brief and Mandatory Development Obligations set forth in this Concession Agreement, that shall be duly considered by the Authority based on the evaluation, assessment and recommendations of the Independent Engineer.

5.10 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 Project Facilities and its impact on Users and the neighborhood. The Concessionaire also agrees to undertake to design and construct the Project / Project Facilities such that adequate measures for noise insulation are taken so as to meet the requisite international standards for respective facilities, duly considering the surrounding area noise levels including due to the functioning of the Airport and Railway line in the adjoining vicinity of the Project Site.

5.11 Obligations relating to competition

The Concessionaire shall not, either directly or through its Associates, or in any other manner acquire control or interest in the operations or services of any other Convention Centre, Exhibition Hall or similar category Hotel situated within a radius of 15 (fifteen) Kilometers from the Project such that its share exceeds 25% (twenty five per cent) of such control or interest in the operations or services of that Convention Centre, Exhibition Hall or similar category Hotel. The Concessionaire shall also ensure and procure that no person who controls or operates any other Convention Centre, Exhibition Hall or similar category Hotel situated within 15 (fifteen) Kilometers from the Project shall acquire control or interest in the operations or services of the Project / Project Facilities such that the share of such person exceeds 25% (twenty five per cent) of such control or interest in the operations or services of the Project;

For the avoidance of doubt, “Convention Centre” shall mean an air conditioned Convention Centre of 2000 pax. Capacity or more and “Exhibition Hall” shall mean a venue with minimum 2500 sq. ft. area, where exhibitions / events are hosted.

Provided that this clause 5.11 shall not apply if such share is the direct consequence of the decisions or directions of the Authority.

For the avoidance of doubt, it is agreed that this clause shall apply from the date of this Agreement and shall be valid until the subsistence of the Concession Period and shall not apply to such prior actions of the Selected Bidder / Consortium Members, subject to such Convention Centre, Exhibition Hall or similar category Hotel situated within a radius of 15 (fifteen) Kilometers from the Project having commenced operations prior to the date of this Agreement. However, in such cases, the Concessionaire shall endeavor to protect the commercial interest of the Project at all times and under no circumstances divert Users / guests to such competing facility under its control.

5.12 Branding of the Project

The Convention Centre and Exhibition Halls shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders or any co-branding partner of the Concessionaire. Save and except as may be necessary in the normal course of business, the Concessionaire undertakes that it shall not, in any manner, use the name or identity of the Convention Centre and Exhibition Halls to advertise or display its own identity, brand equity or business interests, including those of its shareholders. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Convention Centre and Exhibition Halls shall be known, promoted, displayed and advertised by the name of “**Bengaluru International Convention Centre**” or “**BICC**” or any other name that the Authority shall

deem fit, from time to time. It is further agreed that the restriction herein shall not apply to other Project Facilities including but not limited to Hotel, etc.

5.13 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 Project / Project Facilities.

5.14 Project Implementation

- (a) The Concessionaire shall complete the development / implementation / construction of the CMDO and OMDO on or before the respective Scheduled Completion Dates, in accordance with the **Schedule-G** (Project Completion Schedule), Detailed Project Report, Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement.
- (b) The Concessionaire shall conceptualize, design, plan, develop, finance, construct, install, integrate, test & commission, market, administer, manage and operate and maintain the Project/Project Facilities, including without limitation the necessary infrastructure (limited to within the Project Site), the any or all of the other Optional Permissible Facilities as it may desire, services and facilities, during the Concession Period in accordance with the provisions hereof, including the Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice. The Concessionaire shall, for such purposes do all such acts, deeds and things, as may be required under this Agreement. It is further agreed that the commercial operations of the other Optional Permissible Facilities shall be permitted only upon completion and commencement of commercial operations of the CMDO and OMDO.
- (c) In implementing the Project, the Concessionaire shall ensure compliance by itself and Persons claiming through or under it with all Applicable Laws, including environmental laws, and the terms of Applicable Permits and the Concessionaire shall be entirely liable for any violations or breaches thereof and indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.
- (d) The Concessionaire may appoint Contractors to perform its obligations under this Agreement in accordance with **Article-12** and **Article-17**, without in any way relieving the Concessionaire of its liability in this behalf; provided that the Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work/terms of engagement/ of a Contractor, are incorporated in the

terms and conditions under which such Contractor is appointed/retained. The Concessionaire shall indemnify and keep indemnified the Authority from and against all liabilities and costs in this behalf.

5.15 Applicable Permits

- (a) The Concessionaire shall obtain and maintain at its cost all Applicable Permits, including all environmental permits, in conformity with the Applicable Laws and be in compliance therewith. Subject to the Concessionaire complying with the Applicable Laws and Good Industry Practice, the Authority shall (without guarantees and/or without assuming any responsibility in that behalf) facilitate the securing of such consents, clearances and Applicable Permits.
- (b) The Concessionaire shall expeditiously make the necessary applications to the relevant Government Authorities for all Applicable Permits to meet the stipulated time frames in this Agreement, for completion of the Works, to achieve the various performance milestones, if any, and to perform all of its other obligations under this Agreement. The Concessionaire shall supply the appropriate particulars and details to such Government Authorities as may be necessary to confirm that the Concessionaire fulfills the eligibility criteria to enable such authority reasonably to consider the request for the grant of the relevant Applicable Permits and, following the grant of any such Applicable Permits, the Concessionaire shall maintain such Applicable Permits in full force and effect so long as it is necessary in order for the Concessionaire to perform its obligations hereunder.

5.16 Personnel and Labour

- (a) The Concessionaire shall
 - (i) be solely and exclusively responsible for the recruitment, transportation, accommodation, catering, payment of the salaries, wages and other payments and costs incidental thereto, health, hygiene, safety etc. and all taxes, charges, levies, duties payable under Applicable Laws arising from the respective terms and conditions of employment of all labour and personnel employed by the Concessionaire, its Contractors, agents and representatives on or in connection with the Works or the Project Site under or through whatever legal relationship;
 - (ii) make efforts to maintain harmony and good industrial relations among the labour and personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement and be the principal employer in respect of such labour and personnel. The Concessionaire shall be solely responsible and liable for compliance with all Applicable Laws, including labour and local laws, pertaining to the employment of labour, staff and personnel by it and its Contractors for implementing the Project.

- (b) The employees of the Concessionaire and its Contractors shall at all times be the responsibility of the Concessionaire and the Authority shall not be liable in any manner whatsoever in respect of such employees and their employment.

5.17 Contracting

- (a) The Concessionaire may contract at its cost and risk to Contractors possessing the requisite skill, expertise, capacity and technical and financial qualifications, the designing, engineering, procurement and construction of civil / mechanical / electrical engineering structures / equipment related to the Project, and / or operation and maintenance of the Project Facilities or any part thereof provided the Concessionaire shall at all times be solely responsible and liable for any defect, deficiency or delay in the construction and erection of the structures/equipment related to the Project or any part thereof and for the operation and maintenance of the Project Facilities in accordance with the provisions of this Agreement and provided further that this does not result in the carrying out of the whole or substantially the whole, as determined by the Authority, of the Works by the Contractors. The Concessionaire shall ensure that any of its obligations, which are relevant to the scope of work of a Contractor pursuant to this Agreement, are incorporated in the terms and conditions under which such Contractor is retained.
- (b) The Concessionaire shall supervise, monitor and control the activities of Contractors under their respective Project Contracts as may be necessary.
- (c) For the avoidance of doubt, it is hereby clarified that notwithstanding the appointment of a Contractor by the Concessionaire for any of the aforesaid purposes, the Concessionaire shall be liable for the performance of its duties and for the discharge of all its obligations and responsibilities which it shall have towards the Authority under this Agreement and the appointment of Contractor(s) for any of the aforesaid purposes shall neither release nor exonerate the Concessionaire from its obligations hereunder, including full and timely compliance with the terms of this Agreement. The Concessionaire does hereby also agree and acknowledge that it shall remain responsible for obligations performed or to be performed by the Contractors to the same extent as if such obligations were to be always performed by the Concessionaire and shall at all times be solely responsible for any defect, deficiency or delay by the Contractor in the implementation of the Project/execution of Works.
- (d) The Concessionaire further undertakes and covenants that it shall be solely responsible for all payments to be made to the Contractors and shall indemnify the Authority and keep it indemnified and hold it harmless from and against any and all losses, claims, damages, liabilities, costs (including reasonable attorneys' fees and disbursements) and expenses that the Authority may incur, insofar as such losses directly arise out of, in any way relate to, or result from the non-

performance by the Concessionaire of its obligations to the Contractors including non-payment of any money to such Contractors.

- (e) The Concessionaire shall ensure that the subcontractors are capable of discharging the obligations under this Agreement for and on behalf of and in the name of the Concessionaire and that any of its obligations, which are relevant to the scope of work of a Contractor, pursuant to this Agreement, are incorporated in the terms and conditions under which such contractor is retained.

5.18 Transaction Documents

- (a) The Concessionaire accepts and undertakes to ensure that the terms of all Transaction Documents (including the agreements between the Concessionaire and subcontractors and any other Person(s), including vendors of goods and services, or between any of these entities) shall be in conformity with the provisions of this Agreement and not in derogation of or conflict with the provisions hereof. In the event of any conflict or inconsistency between such documents and this Agreement, the provisions of this Agreement shall prevail. The Concessionaire further undertakes that any agreement between itself and the Contractors and any other Person(s), or between any of these entities, shall contain such terms and conditions as may be necessary to ensure that the counter-party thereto is required to perform its part of the agreement(s) in conformity with the Concessionaire's obligations under this Agreement.

5.19 Reporting Requirements

The Concessionaire shall provide to the Authority and the Independent Engineer reports on a regular basis during the Concession Period in accordance with the provisions of **Article-13** and **Article-25** and as set forth elsewhere in the Agreement and at all times provide the Authority such information, data and documents as the Authority may reasonably require.

5.20 Accidents and Safety

- (a) The Concessionaire shall:
 - (i) Develop, implement and administer a surveillance and safety program for the Project and the users thereof and the Contractors' labour and personnel engaged in the provision of any services under any of the Project Contracts, including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
 - (ii) Take all reasonable precautions for the prevention of accidents on or about the Project Site and provide all reasonable assistance and emergency medical aid to accident victims;

- (iii) Maintain liaison with emergency service providers and seek necessary police assistance on payment of applicable charges for the provision of such services as are not provided in the normal course or are available only on payment.

5.21 Taxes and Charges

The Concessionaire shall:

- (i) pay in a timely manner all Taxes, duties, levies, cess and charges including but not limited to property tax, income tax, and goods and services tax, Luxury Tax, customs duty, etc that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority, in respect of the Project;
- (ii) pay all charges, taxes, fines, late fees and other outgoings in relation to the use of utilities and services by the Concessionaire or its Contractors and agents during the implementation and operation of the Project such as water supply, sewage disposal, fuel, garbage collection and disposal, electric power, gas, telephone and other utilities and ensure avoidance of any disruption thereof due to disconnection or withdrawal of the facility.
- (iii) Pay the applicable taxes, duties, levies, cess and charges pertaining to the Property Tax, as applicable for the Project Site / Project / Project Facilities that may be levied, claimed or demanded from time to time by any Government Authority including any increase therein effected from time to time from any Government Authority;

5.22 Foreign Exchange Risk

The Concessionaire shall bear any risk on account of fluctuation in foreign exchange rates during the Concession Period.

5.23 Contractual Arrangements

The Concessionaire shall undertake the commercial use of Project Facilities and development of the Project and enter into Contractual Arrangements, if required, in this behalf in accordance with the provision of this Agreement.

5.24 Environment Management Plan

The Concessionaire shall comply with its obligations under the Environment Management Plan submitted by it to the Pollution Control Board, Government of Karnataka / MoEF.

5.25 Marketing

Undertake marketing, public relations and brand building of the Project at its cost and expense.

5.26 Others

The Concessionaire shall:

- (a) maintain requisite insurance in accordance with the provisions hereof;
- (b) provide all assistance to the Authority and the Independent Engineer as they may reasonably require for the performance of their duties and services under this Agreement;
- (c) be responsible for safety, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards;
- (d) provide representatives of the Authority, including those concerned with safety, security or environmental protection, at reasonable time and upon reasonable notice, access to the Project Site to review progress of construction of the Project and the operations of the Project Facilities and to ascertain compliance with any of the requirements of the Agreement. Provided that any failure on the part of the Authority to inspect any works shall not, in relation to such works, (i) amount to any consent or approval of the Authority or shall be deemed to be a waiver of any of the rights of the Authority under this Agreement; and (ii) release or discharge the Concessionaire from its obligations or liabilities under this Agreement in respect of such work;
- (e) provide or arrange at its cost during the Concession Period all requisite infrastructure including power, electricity, water, sanitation, sewage treatment and disposal, drainage, solid and hazardous waste disposal, effluent treatment and disposal and other utilities and facilities required from time to time in respect of the construction of the Project, operation and maintenance of the Project Facilities and be in compliance to the requirements relating thereto under the Applicable Laws, terms of Applicable Permits and Good Industry Practice;

For the avoidance of doubt, it is agreed that the Authority shall provide infrastructure relating to Power, Water, Sewerage, Roads and utility ducting upto the Project Site boundary, not later than 3 (three) months prior to scheduled date of COD-1. Notwithstanding the same, the Concessionaire shall be responsible for:

- timely applying to the respective authorities for the connections and release of supply;
- remitting the needful charges to the respective authorities, as applicable;

- creating requisite infrastructure at its own cost for tapping and drawing connections from the respective utilities, within the Project Site including metering, etc.;
 - making needful arrangements for power, water, etc. during the construction phase;
 - the infrastructure services shall be subject to clause 6.8 (b), (c).
- (f) Hand over the Project /Project Assets/Project Facilities alongwith the Project Site, free from all Encumbrances and encroachments and in a good operable condition to the Authority or its nominated agency upon the Transfer Date.

5.27 Additional Obligations during the Construction Period

The Concessionaire shall:

- (a) promptly implement the Project in accordance with the provisions of this Agreement, including the Project Implementation Schedule and the Specifications and Standards, the terms of Applicable Permits, the Applicable Laws and Good Industry Practice and achieve the Project Completion;
- (b) entrust responsibility for project management and construction to professionally competent Persons;
- (c) give priority to safety in its construction and planning activities in order to protect life, health, property and environment;
- (d) promptly carry out at its cost such further works as may be necessary to remove any defects or deficiencies observed by the Independent Engineer and ensure completion of the construction of the Project in all respects in accordance with the provisions of this Agreement;
- (e) confine its activities to the Project Site and to any additional areas arranged by the Concessionaire at its cost and not encroach upon, damage or degrade adjacent land and be liable for all costs and consequences for its failure to do so;
- (f) commence Commercial Operations of the Project Facilities only upon issuance of the Completion Certificate and needful statutory / regulatory licences for the respective facilities;
- (g) Provide monthly progress reports of the Project in a format acceptable to the Authority.

5.28 Operations and Maintenance Obligations of the Concessionaire

The Concessionaire shall operate and maintain the Project Facilities at its cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice and as set forth under **Article-17, Article-18, Article-19, Article-20, Article-21, Article-22** and **Schedule-D**.

5.29 Obligations relating to centralisation of revenue collection / billing systems

The Concessionaire, shall install, equip, operate and maintain an up-to-date fully automated and computerized revenue collection and billing system and terminals with appropriate centralized software package and linked to a single central server and provide complete and unrestricted access thereto at all times to the Authority or its authorized representative along with the requisite access codes, manuals and other requisites and a computer terminal to be manned by the Authority or its authorized representative, if so required by the Authority, so that the Authority may undertake or cause periodic and/or random review and monitoring of the Project Revenues as well as other income flows from the Project.

5.30 Obligations relating to Accounting Systems

5.30.1 The Concessionaire shall, maintain books of accounts in accordance with standard accounting practices and statutory requirements under the Applicable Laws recording all its receipts from all sources derived or on account of the Project, income, expenditure, payments and assets and liabilities, foreign exchange earnings from the Project in accordance with this Agreement, the Applicable Laws and Good Industry Practice.

5.30.2 The Concessionaire shall establish and maintain a daily and monthly reporting system to provide storage and ready retrieval of data related to the implementation and operation of the Project, including all such information which is necessary to verify costs and expenses incurred or revenues earned and to confirm the amount of Revenue and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to the Authority within 5 (five) days of the end of each month.

5.31 Obligations pertaining to use of International Convention Centre by Authority

5.31.1 The Concessionaire hereby agrees that it would provide to Authority the International Convention Centre & Exhibition Centre facility for use by the Authority / Government of Karnataka as per the requirement of the Authority / Government of Karnataka for a period not exceeding 5 (five) days in a year, free of charges.

For the avoidance of doubt, it is agreed that:

- (i) the free usage of the Convention Centre & Exhibition Halls may / may not be for a continuous period of 5 (five) days.
- (ii) Usage of Convention Centre & Exhibition Halls may / may not be together / simultaneously on the same day.

5.31.2 The Authority shall atleast 90 (ninety) days in advance of such requirement, book the International Convention Centre & Exhibition Centre with the Concessionaire, provided the same is already not booked for such days.

5.31.3 The Authority agrees that once booked, no cancellation / shifting / rescheduling of dates shall be permitted and similarly, the unutilized days in a year shall not be permitted to be carry forwarded to the next year nor encashed or be transferrable. The Parties hereto agree that any additional day of requirement shall be provided by the Concessionaire, subject to availability and at commercial terms as may be competitively quoted by the Concessionaire.

5.32 Obligations of Selected Bidder

The Selected Bidder shall in accordance with and subject to the provisions of this Agreement, undertake or manage, inter alia, the following areas of the Concessionaire's activities such that the experience and expertise becomes available to the Concessionaire on an on-going basis:

(a) Shareholding Pattern

- (i) [The Selected Bidder, in case it is a single entity, shall hold a minimum of 51% of the paid-up equity share capital of the Concessionaire at all times until the 2nd anniversary of the COD1 and/or COD2, whichever is later (**"Lock-in Period"**).]

[In case of Selected Bidder being a Consortium, Lead Member and each of the other members, whose experience has been considered for qualifying the Bidders at the RFP stage, shall subscribe to 26% (twenty six per cent) or more of the paid up and subscribed equity of the SPV and shall further commit that each such member, during the Lock-in Period, shall hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity share capital of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement. The other members of the consortium shall hold a minimum of 10% of subscribed and paid up equity share capital in the SPV during the Lock-in-Period.]

- (ii) Subject to the provisions of clause (i) above, any change of the shareholding pattern of the Concessionaire including a change in the composition of the Consortium, during the Concession Period, shall be subject to the prior approval of the Authority, from national security and public interest perspective, which approval shall not be unreasonably withheld.

5.33 Obligations pertaining to utilization of Grant received from the Authority for construction of CMDO (*Clause applicable and to be retained only in case the Concessionaire has sought Grant in the Bid*)

- 5.33.1 The Concessionaire hereby agrees to that it would utilize the Grant released by the Authority strictly and only for the purpose of construction of the CMDO.
- 5.33.2 The Concessionaire shall maintain a separate bank account for the purpose of depositing / utilizing the Grant and shall release payments to its contractors / sub-contractors / vendors, etc. of the CMDO, directly from the same only through RTGS / NEFT modes.
- 5.33.3 The Concessionaire shall maintain its books of accounts, site registers, bills of Contractors / Sub-Contractors including measurement records sheets / books, pertaining to the construction of the CMDO, that shall be made available to the Authority / Authorised Representatives and/or to the Auditors of the Authority and/or to the Independent Engineer for inspection / scrutiny / verification.
- 5.33.4 The Concessionaire shall negotiate with the Bank for a competitive interest rate on the Grant deposited in the Bank Account until the time of its utilization. The interest accrued shall be also exclusively used strictly and only for the purpose of construction of the CMDO.
- 5.33.5 Upon utilization of the installment of the Grant released by the Authority, the Concessionaire shall submit an utilization certificate duly certified by its Auditors, for requesting for release of the next installment that shall be subject to completion of the corresponding milestone, in accordance with the provisions of this Agreement;
- 5.33.6 Upon release of all installments of the Grant and utilization of the same, the Concessionaire shall provide a Final Utilization Certificate for the same, duly certified by its Statutory Auditor. Such Certificate shall be submitted within 3 weeks of utilization of the Grant.

ARTICLE - 6

OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide only reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project / Project Facilities;
 - (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; For the avoidance of doubt, the Concessionaire hereby acknowledges the fact that the Project Site area currently does not have access to potable water connection and that the Project Site area falls under the relatively lower water table zone.
 - (c) procure that no barriers are erected or placed on or about the Project Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Safety Requirements, Emergency, national security, or law and order;
 - (d) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate User traffic to the Project / Project Site;
 - (e) assist the Concessionaire in procuring police assistance for regulation of Users and/or traffic, removal of trespassers and security on or at the Project / Project Site, if need be;
 - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.7, 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 Contracts.
- (j) Undertake the timely implementation of internal roads with adequate infrastructure viz: Street Lighting, drainage, Signages, etc within the Bengaluru Signature Business Park / 407 acres of land with Authority upto the Project Site and bear all costs and expenses in respect thereof.
- (k) Provide timely approval to the Master Plan of the Project Site including the details of the CMDO, OMDO and the other Optional Permissible Facilities proposed to be developed, Project implementation plan, business plan (the “**Implementation Report/ Detailed Project Report**”) submitted by the Concessionaire, subject to the same being in compliance with the terms of this Concession Agreement.
- (l) Confirm having obtained needful approvals for taking up the development of the Project on Project Site for the development of Project Facilities as per terms & conditions of this Agreement
- (m) Provide Power and Water supply as per the requirement of the Project, upto the Project Site boundary at its cost.
- (n) Timely release the installments of the Grant (if sought in the Bid), to the Concessionaire on submission of Bank Guarantee and needful request / utilization certificates from time to time.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the Project Site, at its own cost and expense, so that its condition is at no time materially inferior as compared to its condition 7 (seven) days prior to the last date for submission of the Bid. For the avoidance of doubt, the Authority shall undertake to maintain the “as-is-where-is” condition of the Project Site during the Development Period, and it shall protect the same from Encumbrances.

6.3 Obligations relating to Competing Facilities

The Authority shall procure that during the subsistence of this Agreement, the Authority shall, at any time before the [15th (fifteenth)] anniversary of the Appointed Date, not construct or cause to be constructed any Competing Convention & Exhibition Centre Facility in the proposed Bengaluru Signature Business Park / balance land (of 407 acres) with the Authority; and (ii) not promote the Development of another International Convention Centre Facility in Bengaluru on its own or through Public Private Partnership basis. Upon breach of its obligations hereunder by the Authority or any Government of Karnataka instrumentality, the Authority shall be liable to compensate to the Concessionaire as per clause 40.4, and such compensation shall be the sole remedy of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges that (i) the development of any other Competing International Convention and/or Exhibition Centre in Bengaluru by any other private sector / Government of India controlled entity is beyond the control of the Authority and restricting the same shall not be the Obligation of the Authority under this clause 6.3; and (ii) restriction of competing facility within the proposed Bengaluru Signature Business Park / balance land (of 407 acres) with the Authority is limited only to the Convention & Exhibition Centre Facility and not for any other facility similar to the Project Facilities, viz: Hotel, Commercial Development, Food Court, etc.

6.4 Obligations related to Applicable Permits

- (i) The Authority shall, at the request of the Concessionaire, assist but without guarantees and/or without assuming any responsibility in that behalf and issue recommendatory letters and make best efforts to assist the Concessionaire in obtaining all the Applicable Permits from Government Authorities, authorisations to import equipment and materials required for the Project and immigration clearances, employment permits for any foreign personnel engaged or employed by the Concessionaire in connection with the implementation of the Project, including renewals thereof; provided that nothing contained in this provision shall relieve the Concessionaire of its obligations under this Agreement to obtain the Applicable Permits and of being in compliance with the requirements of the same, provided further that the Concessionaire (i) provides to the Authority all necessary relevant details and other information as may reasonably be required by the Authority and (ii) keeps the Applicable Permits in force and effect throughout the Concession Period;
- (ii) Upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, sewerage, electricity and telecommunication facilities.

6.5 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government of India or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

6.6 Compliance with Laws and Regulations

The Authority shall ensure that the obligations under this Agreement shall be in accordance with the Applicable Laws.

6.7 Rights to Documents

(a) Authority's Documents

Documents and computer programs or copies thereof, if any, provided by the Authority to the Concessionaire, shall always remain the property of the Authority. Such documents, computer programs and/or copies shall not be used by the Concessionaire for the purposes other than for the Project. Such documents, computer programs and/or copies thereof shall, unless otherwise agreed upon by the Authority, be returned by the Concessionaire to the Authority on the Transfer Date.

(b) Concessionaire's Documents

Documents provided by the Concessionaire, for operation and/or maintenance of the Project Facilities shall be handed over by the Concessionaire to the Authority on the Transfer Date.

6.8 Others

- (a) In the event of any action or suit to prevent, prohibit or otherwise challenge the Project by any Government Authority, trade union, environmental group or any other Person or organization, which might reasonably be expected to materially and adversely affect the Project Assets / Project Facilities, the implementation of the Project or the enjoyment by the Concessionaire of its rights and benefits under the Concession Agreement granted herein, the Authority shall, if requested by the Concessionaire in writing, on a best effort basis, take such reasonable action as is available to it to challenge and to mitigate such effects.

- (b) The Parties hereto this Agreement agree that the Authority proposes to take up development in the proposed Bengaluru Signature Business Park / balance of 407 acres land with the Authority, separately where the common infrastructure and facilities viz: access road to the Project, Drainage, Street Lighting, Power, Solid Waste Management, external security, CCTV & Surveillance, etc, may be either managed and maintained by the Authority or handed over to its authorized agency or any other outsourced common area service provider or a private sector developer, and may decide to redesign and realign / re-develop the common infrastructure facilities provided to the Project including roads, etc without affecting the day to day operations of the Project, and also levy a common area / services User Fee towards the maintenance of the same, including to the Concessionaire, which the Concessionaire shall agree to pay. For the avoidance of doubt, it is clarified that the Concessionaire at its discretion will be provided the option to also avail any other common services viz: STP, ETP, solid waste management, etc. if being developed at such time, at mutually agreeable User Fee.
- (c) The Parties hereto this Agreement, agree that that the Authority proposes to take up development in the proposed Bengaluru Signature Business Park / balance of 407 acres land with the Authority, separately where the common infrastructure and facilities including common area surveillance, security services may be provided, at a common area / services User Fee towards the same, including to the Concessionaire, which the Concessionaire shall agree to pay; for the avoidance of doubt, the Parties hereto agree that until such time that the development of balance of 408 acres land with the Authority is taken up, the Authority and Concessionaire shall mutually co-operate and seek the assistance of Police, if need be, for maintaining safety and security around the Project Site.

ARTICLE - 7

REPRESENTATIONS AND WARRANTIES

7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, laws in the State of Karnataka, 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 for those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before

any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a Material Adverse Effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and 5.3.2;
- (l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation or registration, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary

to make such representation or warranty not misleading;

- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith;
- (q) all information provided by the {selected bidder / Consortium Members} 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; and
- (r) all undertakings and obligations of the Concessionaire arising from the Request for Qualification and Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under 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 this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any Material Adverse Effect on the 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 Project Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

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

ARTICLE - 8

DISCLAIMER

8.1 Disclaimer

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

Part III

Development & Operations

ARTICLE - 9

PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire confirms that it has for the performance of its obligations hereunder, provided to the Authority, prior to the execution of this Agreement, within thirty (30) days of issuance of the LOA, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to **Rs. 46,75,00,000 (Rupees Forty Six Crores Seventy Five Lakhs only)** in the form set forth in **Schedule-F** (the “**Performance Security**”).

Until the time the Performance Security was provided by the Concessionaire and the same came into effect, the Bid Security was in force and effect. Upon the provision and coming into effect of the Performance Security, the Authority has released the Bid Security to the Selected Bidder.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security the amounts due to it for and in respect of such Concessionaire Default or for failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level 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 Authority shall be entitled to terminate this Agreement in accordance with **Article-42**. 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 120 (one hundred twenty) days for remedying the Concessionaire Default or for satisfying any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with **Article-42**.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect during the Construction Period from the date of this Agreement until the Concessionaire achieves COD1 and/or COD2, whichever is later. The Performance Security proportionate to the estimated cost

of CMDO shall be released earlier upon the Concessionaire achieving COD1 and the balance Performance Security shall be released upon the Concessionaire achieving COD2; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement and/or has not submitted the prescribed Operations Performance Security. 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 Authority shall release the Performance Security forthwith.

9.4 Deemed Performance Security

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute Performance Security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 36.3, constitute the first and exclusive charge on an equivalent balance in the Escrow account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge and the right to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for security payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of Concessionaire Default shall be liable for payment hereunder.

9.5 Appropriation of Deemed Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights over the Performance Security / Operations Performance Security and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Deemed Performance Security as Damages for Concessionaire Default over and above the Performance Security / Operations Performance Security. For the avoidance of doubt, the Parties expressly agree that upon the Deemed Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriations.

9.6 Reference to Performance Security

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

Concessionaire, and the amount so determined shall be appropriated from the Deemed Performance Security, after the encashment of the Performance Security / Operations Performance Security as the case may be.

9.7 Operations Performance Security

The Parties expressly agree that at least 30 (thirty) days prior to COD1, a substitute Operations Performance Security for **an amount equivalent to INR 5,00,00,000/- (Indian Rupees five crore)** shall be created under this Clause 9.4, for and in respect of the entire Concession Period (the “**Operations Performance Security**”). The Operations Performance Security shall be unconditional and irrevocable.

9.8 Appropriation of Operations Performance Security

Upon occurrence of a Concessionaire Default during the operations period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to appropriate the relevant amounts from the Operations Performance Security as Damages for Concessionaire Default over and above the Deemed Performance Security. For the avoidance of doubt, the Parties expressly agree that upon the Operations Performance Security being appropriated, in whole or in part, it shall be deemed to be replenished to the extent of such appropriations.

ARTICLE - 10

RIGHT OF WAY

10.1 The Project Site

The site of the Project shall comprise of the extent described in **Schedule-A** and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Site**” or “**Project Site**”).

10.2 Licence, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Project Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Project 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 Authority, 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 comprising the Project 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 limited to undertaking the Project / Project Facilities.

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 Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Site by the Concessionaire or its authorized agencies, 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 Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.6 It is expressly agreed that trees, if any, on the Project Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.
- 10.2.7 The Authority hereby confirms the following:
- (i) that it has acquired the Project Site through the due process of law; and
 - (i) That the Project Site belongs to and is vested in the Authority and that the competent authority has vested with the Authority the full powers to hold, and deal with the same consistent, inter alia, with the provisions of this Agreement, and that the Concessionaire shall, in respect of the Project Site, have no liability regarding any compensation payment on account of rehabilitation/ resettlement or claims of any Persons affected thereby.

10.3 Procurement of the Site

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

Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which is necessary and required for the implementation of any critical element of the CMDO and/or the OMDO without which the Completion Certificate or Provisional Certificate may not be granted.

- 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 Project Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to provide and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire, Damages in a sum calculated at the rate of Rs.1000/- (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 implementation of the Project / Project Facilities 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.

10.4 Project Site to be free from Encumbrances

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

as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the 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 and physical condition of the Project Site.

10.5 Protection of Project Site from Encumbrances

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

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

10.9 Information about Project Site

- (a) The information about the Project Site set out in the RFP, is provided by the Authority to the Concessionaire in good faith and with due regard to the matters for which such information is required by the Concessionaire. The Authority agrees to provide to the Concessionaire, upon a reasonable request, any further information relating to the Project Site, which the Authority may now possess or may hereafter come to possess. Subject to this, the Authority makes no representation and gives no warranty to the Concessionaire in respect of the condition of the Project Site and the Concessionaire shall accept the Project Site on an “as is where is basis”.
- (b) The Concessionaire acknowledges that before entering into this Agreement, it has had sufficient opportunity to investigate the Project Site, and
 - (i) accepts full responsibility for its condition (including but not limited to its geological condition, any toxic contamination, the adequacy of the connectivity options, access and approach to the Project Site at all times and the availability or unavailability of adequate supplies of water, power or any other resources); and
 - (ii) agrees that it shall not be relieved from any of its obligations under this Agreement or be entitled to any extension of time or financial compensation by reason of the unsuitability of the Project Site (or part thereof) or for any other reason pertaining to the Project Site.

10.10 Lease /Sub-Lease/license/sub- license

(a) No Lease /Sub-Lease/license/sub- license of Project Site

The Concessionaire shall not lease / sub-lease / licence / sub-licence the whole or any part of the land comprising the Project Site, under the Concession, to any person in any form or under any arrangement, device or method. Further, the Concessionaire shall not have any right to create any Encumbrance and/or convey/transfer/assign any right/title/interest in any manner in the Project Site.

This is an essential condition of this Agreement, the breach of which shall constitute a Concessionaire Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 42 hereof.

(b) License / Contract of built-up area/space on the Project Site

The Concessionaire shall however be allowed to licence/ Contract any built-up area or any developed space in the Project Facilities provided the terms and conditions of licences/ Contract for a period that shall under all circumstances shall be less than or coterminous with the Concession Agreement and under no

circumstances shall licence / Contract terms provide for further sub-licence / sub-contract rights.

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall be permitted to lease/ sub-lease/ license/ sub-license the developed built-up space of the Commercial Development Facilities being part of the Other Minimum Development Obligations (OMDO) and the other Optional Permissible Facilities, only through Project Contracts which have obtained prior approval of the Authority.

10.11 Contractual Arrangements

- (a) Subject to the terms of this Agreement, the Concessionaire may grant sub-licenses/ Contract of the built up areas on the Project Site (which shall, for the avoidance of doubt, not involve the transfer or conveyance of the Right of Way in and of the Project Site, in full or part) or enter into licenses, franchising, management, service, subcontracting or similar arrangements and/or to run, operate, manage and provide the Project Facilities, on mutually agreed terms and conditions (the “**Contractual Arrangements**”) with any Person of its choice (the “**Licensees**”), only through Project Contracts which have obtained prior approval of the Authority. The Concessionaire shall, subject to the terms hereof, be entitled to demand, charge, collect, retain and appropriate the Project Revenues for such arrangements. However, the Concessionaire shall not have any right to create any Encumbrance and /or convey/transfer/assign any right/ title/interest in any manner in the Project Site.
- (b) **Terms of Contractual Arrangements**
The Concessionaire shall unconditionally ensure that all Contractual Arrangements shall be compliant to the terms hereof and particularly to the following terms and conditions:
 - (a) undertake the operation and maintenance of the Project Facilities in accordance with the provisions hereof, including the Specifications and Standards; provided that the Concessionaire shall, if it undertakes the operation and maintenance, be entitled to demand, collect and retain monthly/periodic maintenance charges from the Sub-Licensees;
 - (b) the Contractual Arrangements under or pursuant to this Agreement shall not contain any terms or provisions inconsistent with or in derogation of any terms or provisions contained in this Agreement;
 - (c) the terms and conditions of this Agreement shall be complied with and as applicable, form a part of the Contractual Arrangements and the Licensees, if any, shall be bound by such terms and conditions and be liable and accountable in respect thereof;
 - (d) the term of the Contractual Arrangements shall, in all events and notwithstanding anything contained herein, be limited to and be co-terminus with the Concession Period;

- (e) all the Contractual Arrangements shall be determined and terminated automatically and simultaneously with the expiry, determination or termination of this Agreement, as the case may be;
- (f) the execution of Contractual Arrangements shall not relieve the Concessionaire of its liability or obligations as set out in this Agreement;
- (g) Each Contractual Arrangement shall include provisions to the effect that in case of a conflict, direct or indirect, between the provision of this Agreement on the one hand and the Contractual Arrangement on the other hand, the provisions of this Agreement, shall prevail and such Contractual Arrangement shall stand modified to that extent;
- (h) The use of the Project Facilities shall comprise the uses/activities specified in the Specifications and Standards and shall not comprise the Prohibited Activities set forth in **Schedule-C**, unless otherwise previously approved in writing by the Authority;
- (i) the Concessionaire's failure to comply with this Clause 10.11 shall be at its cost, risk and consequence and constitute a Concessionaire Event of Default that shall entitle the Authority to terminate this Agreement in accordance with the provisions of Article 42 hereof;
- (j) The Authority shall not be liable in any manner whatsoever to any Licensee/Person in respect of or in connection with execution of agreements/documentation or disputes relating to the Contractual Arrangements between the Concessionaire and such Transferee/person. The Concessionaire shall indemnify and keep indemnified the Authority and its employees, representatives, agents and consultants from and against all costs, losses, damages, liabilities, proceedings, litigation, penalties etc. in this behalf.
- (k) The Revenue Share amount payable by the Concessionaire to the Authority shall be computed including the revenues accruing from the operations of all such Project Facilities including within the CMDO, OMDO and any other Facilities / Assets developed in the Project Site, irrespective of such Project Facility being contracted to any other agency. The Concessionaire agrees to include suitable clauses in the Contractual Arrangements to this effect. For the avoidance of doubt, the Parties agree that only the office & retail built up spaces not forming part of the other Optional Permissible Facilities, if any, shall be excluded from the provisions of this sub-clause (k), in which case the revenues accruing to the Concessionaire in the form of rentals, interests on deposits, advances, etc. (excluding the component of actual costs in any common area maintenance charges collected) shall be considered for the purpose of computation of Revenue Share.

- (1) The Concessionaire shall ensure that any and all Contractual Arrangement entered into by it with Licensee shall specifically include a clause to the following effect:

“This Agreement does not contain any terms or provisions inconsistent with or in derogation of any terms or provisions contained in Concession Agreement executed between the Authority and M/s _____(the Concessionaire) on ____ day of _____, 20__ at _____.”

ARTICLE - 11

UTILITIES AND ROADS

11.1 Existing Utilities and Roads

Notwithstanding anything to the contrary contained herein, the Authority shall ensure that the Project Site being earmarked for the Project will be free from any utilities and internal roads, if any. In case of such utilities and roads being part of the Project Site, the Authority shall, at its cost and prior to the Appointed Date arrange to shift the same such that the Project Site is free from such Utilities, installations and Roads.

11.2 Shifting of obstructing utilities

The Authority shall undertake the shifting of any utility including electric lines, water pipes and telephone cables, internal Roads, installations, to an appropriate location or alignment within or outside the Project Site if and only if such utility causes or shall cause a Material Adverse Effect on the design of the Project, construction, operation or maintenance of the Project. The cost of such shifting shall be borne by the Authority or any entity owning such utility, if the Authority so directs, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, installations, Roads, etc as the case may be.

11.3 New utilities

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

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a Material Adverse Effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Concessionaire, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a

direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

ARTICLE - 12

IMPLEMENTATION OF THE PROJECT

12.1 Obligations prior to commencement of construction

12.1.1 Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design (in compliance to Schedule-B, Schedule-C and Schedule-D), construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Detailed Project Report (DPR) submitted as per provisions of the Conditions Precedent and the Project Completion Schedule as set forth in **Schedule-G**;

The Detailed Design shall in specific also include the detailed design of the CMDO, OMDO and other developments proposed to be developed, including detailed floor plans, elevations, perspective views (interior as well as exterior), specifications and finishes, Bill of Quantities, etc. The detailed design shall be based on the Technical Proposal submitted & presented along with the Proposal, duly incorporating suggestions of the Authority and/or the Committee.

- (b) appoint its representative duly authorised to represent itself with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

12.1.2 The Concessionaire shall, prior to commencement of construction of the Project, furnish to the Authority and to the Independent Engineer, the architectural parameters, controls, building profiles, facades, dimensions, designs, design assumptions / basis, building material specifications & samples (the “**Architectural Design**”), which it shall have procured from a reputed architect / architect firm. For the avoidance of doubt, the Parties hereto agree that the Architectural Designs shall be in compliance to the Design Brief, Specifications & Standards, and the requirements of CMDO and OMDO, as in **Schedule-B, Schedule-C** and **Schedule-D** respectively as well as the Technical Proposal submitted & presented along with the Proposal, duly incorporating suggestions of the Authority and/or the Committee.

12.1.3 Within 30 (thirty) days of the receipt of the Architectural Designs, the Authority and/or 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 Specification and Standards or require improvement in aesthetic

quality or harmony with the environment. If the aforesaid observations of the Authority or the Independent Engineer indicate that the Architectural Design is not in conformity with the Scope of the Project or the Specifications and Standards or require improvement in aesthetic quality or harmony with the environment, it shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Engineer for review. The Authority and / or the Independent Engineer shall give the observations, if any, within 7 (seven) days of receipt of the revised Architectural Design.

- 12.1.4 In the event that any modifications to the Architectural Design shall have been determined under and in accordance with Clause 12.1.3, the Architectural Design shall be deemed to be modified to the extent thereof.
- 12.1.5 The Concessionaire shall not be obliged to await the observations of the Authority on the Architectural Design submitted pursuant hereto beyond the said 30 (thirty) days period and may begin Construction Works at its own discretion and risk. For the avoidance of doubt, no review and/or observations of the Authority or the Independent Engineer and / or their failure to review and / or convey their observations on the Architectural Design shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Engineer be liable for the same in any manner.
- 12.1.6 In the event that the Concessionaire or the Authority, as the case may be, proposes to modify any element of Architectural Design subsequent to the process specified in Clauses 12.1.2, 12.1.3 and 12.1.5, and notifies the other Party of its intent, a Dispute shall be deemed to have arisen and the provisions of Article-49 shall apply mutatis mutandis for resolution thereof; provided that the Board of Arbitrators to be appointed under the provisions of clause 49.3 shall only consists of eminent architects of international repute. The fee payable by the Authority to such arbitrators shall, in case the modification has been proposed by the Concessionaire, be reimbursed by the Concessionaire, subject to a limit of Rs.5,00,000 (rupees five lakhs only) per day. For the avoidance of doubt, the Parties agree that the modifications pursuant to this clause 12.1.6 shall be deemed to be Change of Scope and shall be undertaken in accordance with the provisions of Article-16.
- 12.1.6 In the event that any modifications to the Architectural Design shall have been determined under and in accordance with clause 12.1.3, the Architectural Design shall be deemed to be modified to the extent thereof.

12.2 Master Plan for the Project Site

- 12.2.1 The Concessionaire shall at all times procure and ensure that the Project is constructed and developed in compliance and accordance with the concept and theme set forth in the Design Brief and conceptual / preliminary Project Master Plan in **Schedule-A**.

The Concessionaire hereby further agrees that it shall be mandatory for it to design the

Project / Project Facilities on lines of the “Green House Concept” under the “Garden City Theme” and as per the Design Brief at **Schedule-B** and **Schedule-C** of this Agreement, as per the decision of the Authority / Government of Karnataka, which shall be binding at all times and on basis of which the conceptual / preliminary Master Plan has been prepared by the Authority through its consultant. The Parties to this Agreement hereto agree that the said conceptual / preliminary Master Plan shall only be the guiding design of the Master Plan for the Project and that the Concessionaire shall through its Architect / Design consultant shall have prepared a detailed design including detailed Master Plan for the Project on basis of the same. For the avoidance of doubt, the Parties agree that any deviations to the conceptual / preliminary Master Plan, if proposed by the Concessionaire, shall have to be submitted to the Authority and / or the Independent Engineer by the Concessionaire and the Authority shall have the discretion to accept the same, if the same is not in deviation to the concept, theme, and guiding principle of the conceptual / preliminary Master Plan, and is found to be an improvement in design for better efficiencies / functionality of the Project.

12.2.2 The Concessionaire may, with prior written consent of the Authority, use any area earmarked for future expansion of the Project, if any proposed, for other purposes incidental to or associated with the Project, until the same is required for the expansion Project, subject to the conditions that only temporary structures may be constructed in such area and the use thereof shall at all times be in conformity with Applicable Laws, Good Industry Practice and does not affect the aesthetics of the Project. The Concessionaire hereby further agrees to that the areas proposed for future expansion shall be protected from encroachments, maintained, and aesthetically landscaped so as to cohesively synergise with the Project environment, until such time that the expansion / development proposed thereon is taken up.

12.2.3 The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the Project / Project Facilities or to expand any part thereof, and upon receipt of any request hereunder, the Authority shall grant approval to the extent reasonably required in pursuance of this Clause 12.2.3, subject to other terms and conditions of this Agreement.

12.3 Detailed Project Report and Drawings

In respect of the Concessionaire's obligations with respect to the Detailed Project Report (“DPR”) and Drawings of the Project as set forth in **Schedule-H**, the following shall apply:

- (a) As part of the DPR, the Concessionaire shall propose the detailed design of the Project as per the Theme, Concept and Design Brief as in **Schedule-B** and **Schedule-C** for the Project Master Plan, development of the CMDO / OMDO / other Optional Permissible Facilities, including Project Phasing (if any) for Project Facilities other than the CMDO and OMDO, implementation schedule, etc. to the Authority for approval as per clauses 12.1 and 12.2.

- (b) Based on the approved DPR, 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, which shall be in compliance to Schedule-G;
- (c) 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, the Specifications and Standards, the Applicable Laws and Good Industry Practice;
- (d) 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;
- (e) 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;
- (f) 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 Authority be liable for the same in any manner;
- (g) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the buildings and other structures of the Project Facilities, location and general arrangement drawings of major Project Facilities, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder;
- (h) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built

Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium as may be acceptable to the Authority, reflecting the Project as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project and setback lines, if any, of the buildings and structures forming part of Project Facilities. In addition to the same, the Concessionaire shall compile and submit the detailed structural designs of the Building and other structures including assumptions and design sheets to the Authority for records and future reference.

- (i) The Concessionaire may, during the Concession Period, with the prior written approval of the Authority, through the Independent Engineer propose to make alterations / upgradation / addition to any of the Project Facilities or add an additional Project Facility, which shall be required to follow a similar approval process.
- (j) In addition to the above, the concessionaire shall endeavor to develop the Project Facilities considering the following aspects:
 - All the Project Facilities proposed shall adhere to the Environmental/ Eco Friendly Guidelines;
 - Incorporate Energy and resource efficient designs;
 - Maintain Plastic Free Zone within the Project Site;
 - Efforts for Water Conservation, water recycling & reuse, rainwater harvesting, shall be adopted to the extent possible;
 - Adopt the initiatives of Swachh Bharat, Digital India, etc to the best extent possible in the Project / Project Facilities

12.4 Construction of the Project

12.4.1 The Concessionaire shall undertake the Construction of the Project as below:

- (i) Within 30 days of the receipt of all applicable permits / approvals including from statutory / regulatory Agencies / Bodies, the Concessionaire shall commence the construction of the CMDO as specified in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**, such that the date for completion of the Project Facilities, shall be 24 (twenty four) months from the date of this Concession Agreement, for the Core Minimum Development Obligations (CMDO), the **“Scheduled Completion Date for CMDO”**
- (ii) Within 30 days of the Appointed Date, the Concessionaire shall undertake construction of the balance Project components including the OMDO as specified

in **Schedule-B** and **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D**, such that the date for completion of the Project Facilities, shall be 48 (forty eight) months from the Appointed Date, for the Other Minimum Development Obligations (OMDO), the “**Scheduled Completion Date for OMDO**”

The Concessionaire agrees and undertakes that construction of the CMDO and the OMDO shall be completed on or before the respective Scheduled Completion Dates. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Dates shall not apply to the other Optional Permissible Facilities. Notwithstanding the same, it is however clarified that the commercial operations of the Optional Permissible Facilities shall however not be permitted to be commenced prior to completion of CMDO and OMDO.

The Authority shall on best effort basis facilitate the grant of sanctions / applicable permits to the Concessionaire, and where applicable, in the event of any delay in the grant of such sanction for reasons not attributable to the Concessionaire (as determined by the Independent Engineer), the Authority shall give commensurate extension of time for fulfillment of the relevant obligations to the Concessionaire and, where applicable, based on the recommendations of the Independent Engineer.

- 12.4.2 The Concessionaire shall construct the Project CMDO and OMDO 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 respective Scheduled Completion dates set forth for such Milestone in **Schedule-G**, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority or delays in receiving statutory clearances, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; For the avoidance of doubt, it is agreed that the aforesaid Damages shall apply separately to the CMDO and OMDO, individually and respectively; 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 Scheduled Completion Dates for CMDO and OMDO are respectively achieved on or before the respective Scheduled Completion Dates, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.4.3 In the event that the Project is not completed and the COD1/COD2 does not occur for either the CMDO and/or the OMDO within 270 (two hundred and seventy) days from the respective Scheduled Completion Dates, unless the delay is on account of reasons solely attributable to the Authority or due to delays in receiving statutory clearances or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 Development of International Convention and Exhibition Halls

- 12.5.1 Subject to the provisions of Clause 12.1, the Concessionaire shall undertake the development of the International Convention Centre and Exhibition Halls as specified in **Schedule-B** together with the provisions of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D** and the Project Implementation Schedule set forth in **Schedule-G**.

- 12.5.2 Any development, addition or modification to the design of the International Convention Centre and Exhibition Halls and its surrounding areas shall be in accordance with the Architectural Design and approved Master Plan, and subject to the approval of the Authority, and in harmony with the overall design and environment of the Project Theme, Concept and the Technical Proposal.

- 12.5.3 The Parties hereto agree that the specifications for the Minimum Development Obligations in the CMDO and OMDO shall be the minimum specifications that the Concessionaire is required to adhere to and the Concessionaire shall have the discretion to make additional development in terms of capacity, size, amenities, facilities and improvements / enhancements to the specifications of the Minimum Development Obligations as may be required to suit its design standards, or any other parameters for qualifying the Convention Centre / Exhibition Hall so as to meet any specific standards other than that specified.

12.6 Development of Hotel

- 12.6.1 Subject to the provisions of Clause 12.1, the Concessionaire shall undertake the development of the Hotel as specified in **Schedule-B** together with the provisions of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D** and the Project Implementation Schedule set forth in **Schedule-G**.

- 12.6.2 The Parties hereto agree that the specifications for the OMDO shall be the minimum specifications that the Concessionaire is required to comply to, and whereas the Concessionaire shall have the discretion to make additional development in terms of capacity, size, amenities, facilities and improvements / enhancements to the specifications of the OMDO as may be required to suit a higher classification / standard for the Hotel.

The Parties hereto agree that the while the OMDO is for development of 1 Hotel of 5

Star of equivalent category with a minimum of 250 rooms, the master plan shall provide for the development of an additional hotel, that shall not form part of the Minimum Development Obligations of the Concessionaire. Notwithstanding the same, the Concessionaire shall have the discretion to decide to take up the development of the additional Hotel in the balance land, as part of the Optional Permissible Facilities.

12.7 Commercial Development

12.7.1 Subject to the provisions of Clause 12.1, the Concessionaire shall undertake the development of the Commercial Development as specified in **Schedule-B** together with the provisions of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D** and the Project Implementation Schedule set forth in **Schedule-G**.

12.7.2 The Parties hereto agree that the Concessionaire would have the discretion to decide the balance facility mix of the Commercial Development other than that specified, while the extent of the Commercial Development shall not exceed the maximum extent of Commercial Development permissible as per the terms set forth in this Agreement. For the avoidance of doubt, the parties agree to that for the purpose of assessing the extent of Commercial Development proposed / developed under this provision of this Agreement, the basis followed by the respective development authority for the purpose of computation of FAR / FSI shall be considered.

12.8 Development of Multi-Level Car Parking

12.8.1 Subject to the provisions of Clause 12.1, the Concessionaire shall undertake the development of the Multi-level Car Parking as specified in **Schedule-B** together with the provisions of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D** and the Project Implementation Schedule set forth in **Schedule-G**.

12.8.2 The Parties hereto agree that the specifications for the OMDO shall be the minimum specifications that the Concessionaire is required to comply to, and whereas the Concessionaire shall have the discretion to make additional development in terms of capacity, size, amenities, facilities and improvements / enhancements to the specifications of the OMDO.

12.8.3 The Parties hereto also agree to the following:

- (a) Subject to fulfillment of the Standards and Specification as specified in this Agreement, the Concessionaire shall have the discretion to decide on the technology of level of automation of the Parking.
- (b) The Concessionaire shall take due care and attention to design the parking in an aesthetic and architectural manner so as to appear cohesively with the Project / Project Facilities.
- (c) The design shall be such that the safety and security aspect is diligently

addressed in the design itself.

12.9 Development of Internal Infrastructure

12.9.1 Subject to the provisions of Clause 12.1, the Concessionaire shall undertake the development of the Internal Infrastructure as specified in **Schedule-B** together with the provisions of Project Facilities as specified in **Schedule-C**, and in conformity with the Specifications and Standards set forth in **Schedule-D** and the Project Implementation Schedule set forth in **Schedule-G**.

12.9.2 The Parties hereto this Agreement agree that development of internal infrastructure shall be the role of the Concessionaire as an integral part of the Project and shall be designed and implemented along with the Project as per Good Industry Standards and Practices.

12.10 Modifications and expansion of Project / Project Facilities, if any

12.10.1 During the Concession Period, the Concessionaire shall, carry out regular modifications to the Project / Project Facilities including upgrades in technology, so as to maintain the Project Facilities upto date with the Best Industry Practices and Standards as applicable from time to time, where such modifications would be with the approval of the Independent Engineer and in conformity with the Specifications and Standards, Maintenance Requirements, applicable bye-laws and Good Industry Practice; provided that for any modifications necessary for compliance of the provisions of this Agreement, the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof. Thereafter, the proposed modifications along with the suggestions and observations of the Independent Engineer shall be submitted to the Authority for its final approval. The Concessionaire shall abide by the final approval of the Authority which shall be made within 15 (fifteen) days of receiving the Concessionaire's proposal.

12.10.2 The provisions of this Agreement, insofar as they relate to Construction Works, shall apply, mutatis mutandis, to the expansion, modifications, upgradation, renovation of the Project / Project Facilities, save and except where express provisions to the contrary have been made in respect thereof.

ARTICLE - 13

MONITORING OF IMPLEMENTATION

13.1 Monthly progress reports & Quarterly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer. In addition, no later than 15 (fifteen) days after the close of each Quarter, the Concessionaire shall furnish to the Authority and the Independent Engineer a Quarterly report on progress of the Construction Works.

For the avoidance of doubt, the monthly / quarterly progress reports shall be in the format approved by the Authority, shall include the physical as well as financial progress details of the Project and be submitted separately for the CMDO, OMDO, Optional Permissible Facilities (if any being taken up) and the internal infrastructure. Further, in case of any clarifications / additional information sought by the Independent Engineer / Authority, the same shall be furnished promptly and not later than 5 days from the date of receipt of such request.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project at least once a month and make an independent 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, Project Completion Schedule and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article-13 shall include the other Optional Permissible Facilities as well.

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. The costs incurred on such tests shall be borne by 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 also 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 Project is not likely to be completed by the respective Scheduled Completion Dates, 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 respective Project Completion Dates.

13.5 Suspension of unsafe Construction Works

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the Users or any other persons. However, in case of any emergency, the Authority may suo moto issue the notice to the Concessionaire, and may not wait for the recommendation of the Independent Engineer.

- 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 Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 39.7, 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 Authority.

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 Authority accordingly whereupon the Authority 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 Authority 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 Authority 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 90 (ninety) days prior to the likely completion of the CMDO and the OMDO, respectively, the Concessionaire shall notify the Independent Engineer of its intent to subject the CMDO and OMDO to Tests, respectively. 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 Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer. For the avoidance of doubt, it is agreed that the provisions of this Article-14 shall apply to the other Optional Permissible Facilities.
- 14.1.2 All Test 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 Project CMDO and OMDO, respectively, with the Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Tests that the performance of the Project CMDO and OMDO respectively 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 Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project CMDO and OMDO respectively 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 (for the CMDO and the OMDO, separately) to the Concessionaire and the Authority a certificate substantially in the form set forth in **Schedule-J** (the “**Completion Certificate**”).

14.3 Provisional Certificate

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

Project 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**”).

- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if at least 80% (eighty per cent) of the total CMDO / OMDO as the case may be, has been completed. Upon issue of such Provisional Certificate, the provisions of Article-15 shall apply to such completed part.

14.4 Completion of Punch List Items

- 14.4.1** All items in the Punch List shall be completed by the Concessionaire within 120 (one hundred and twenty) days of the date of issuance of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at 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 Authority may provide to the Concessionaire, a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

- 14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate for the CMDO and the OMDO, respectively, as the case may be. Failure of the Concessionaire to complete all the Punch List items with 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 Authority, shall entitle the Authority to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

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

from the Independent Engineer and after conducting its own inspection, if the Authority is of the opinion that the CMDO and/or OMDO 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 CMDO and/or OMDO 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 Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

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

ARTICLE - 15

ENTRY INTO COMMERCIAL OPERATIONS

15.1 Commercial Operation Dates

- 15.1.1 The CMDO and the OMDO or the parts thereof shall be deemed to be complete when the respective 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 respective Project Facility shall be the date on which such respective Completion Certificate or the Provisional Certificate is issued and the Concessionaire has obtained the Applicable Permits / Licences, as may be applicable for commencement of operations of the Project Facilities within the CMDO (the “**Commercial Operations Date for CMDO**” or “**COD1**”) and within the OMDO (the “**Commercial Operations Date for OMDO**” or “**COD2**”). The CMDO or part thereof shall enter into commercial service on COD1, whereupon the Concessionaire shall be entitled to demand and collect User Fee in accordance with the provisions of Article 34. Similarly, the OMDO or part thereof shall enter into commercial service on COD2, whereupon the Concessionaire shall be entitled to demand and collect User Fee in accordance with the provisions of Article 34.

For the avoidance of doubt, Project Completion herein refers to the achievement of both, the COD1 and COD2, by the Concessionaire. The Concessionaire may construct, complete, commission, operate and maintain the other Optional Permissible Facilities as specified in **Schedule-C**, provided that the other Optional Permissible Facilities shall not be commissioned and commercial operations thereof shall not be commenced prior to the achievement of COD1 and COD2 for the CMDO and OMDO, respectively, in accordance with the Provisions hereof.

- 15.1.2 In the event that the Authority prevents, or causes to be prevented, or in any manner delays the entry of the Project CMDO and/or OMDO into commercial operations after issuance of respective Completion Certificate or the Provisional Certificate, as the case may be, or where such delays occurs in the issuance of such certificate by the Independent Engineer for any reason attributable to the Independent Engineer or the Authority, as the case may be, the concessionaire may declare COD1 and/or COD2, as the case may be, and notify the Authority forthwith. In the event of any dispute relating to the declaration of COD1 and/or COD2 hereunder, the Dispute Resolution Procedure shall apply.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD1 and COD2 does not occur prior to the 91st (ninety first) day after the respective Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD1 and/or COD2 is achieved, respectively. For the avoidance of doubt, it is agreed that the Damages shall apply individually and separately to the CMDO and OMDO, respectively.

ARTICLE - 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article-16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope. In such a case, the decision of the Authority shall be final and binding.

16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary documentation in support of:

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the materials and labour costs calculated in accordance with the Schedule of rates applicable to the works

assigned by the Authority, to its contractors, along with the proposed premium / discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the “**Change of Scope Order**”) requiring the Concessionaire to proceed with the performance thereof. In the event that the Parties are unable to agree, the Authority may, by issuing a Change of Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Test, 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 Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty percent) of the cost of the Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty percent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.4 Restrictions of 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 Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project CMDO and/or OMDO, as the case may be; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project CMDO and/or OMDO, as the case may be, and issuing the

Provisional Certificate.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2.5% (two point five per cent) of the bid amount to the Authority, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and co-operation to the person who undertakes the works or services hereunder.
- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operations of the Project. 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 Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax returns of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree upon a full or partial waiver of the aforesaid payment of 80% (eighty percent) 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 46.3. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eight percent). 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 Orders by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE - 17

OPERATIONS AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project / Project Facilities including but not limited to CMDO and OMDO, in accordance with this Agreement either by itself, or through the O&M Contractor(s) and if required, modify, upgrade, repair or otherwise make improvements to the Project / Project Facilities from time to time 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 use of the Project / Project Facilities during normal operating conditions;
- (b) determining and collecting and appropriating the User Fee in the manner it may decide;
- (c) minimizing disruption to the use of Project / Project Facilities in the event of accidents or other incidents affecting the safety and use of Project / Project Facilities by providing a rapid and effective response and maintaining liaison with the emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project / Project Facilities;
- (e) undertaking routine maintenance and upgradation of the Project / Project Facilities including structures, buildings, lifts, escalators, generators, landscaping, communication systems, sound, acoustics, lighting, glazed façade, external lighting / street lighting, pavement markings, road signs, other devices and equipment, drainage systems, air conditioning, diesel generators, etc;
- (f) undertaking major maintenance such as upgradation and repairs of the Project / Project Facilities including structures, buildings, lifts, escalators, generators, landscaping, communication systems, sound, acoustics, lighting, glazed façade, external lighting / street lighting, pavement markings, road signs, other devices and equipment, drainage systems, air conditioning, diesel generators, etc from time to time as per Good Industry Practice;

- (g) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project / Project Facilities and Project Site;
- (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 Project;
- (j) maintaining a public relations unit to interface with and attend to suggestions from the Users, etc;
- (k) complying with Safety Requirements in accordance with Article 24;
- (l) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;
- (m) maintaining a high standard of cleanliness and hygiene and sanitation at the Project;
- (n) Implement, maintain and manage a water harvesting system at the Project Site;
- (o) Implement best practices for solid waste management and endeavor the Project to adopt “Zero Discharge” principles;
- (p) Implement, maintain and manage the green areas, landscaping within the Project Site in accordance with Good Industry Practices;
- (q) The Concessionaire shall exercise appropriate control over the O&M Contractors and shall manage, direct, administer and supervise their working so as to ensure compliance with the provisions of this Agreement.
- (r) The Concessionaire shall carry out the operation and maintenance of the Project Facilities with the objective of providing quality service standards and ensuring that the Project Facilities and the buildings, infrastructure, equipment, systems etc. are maintained in an excellent state, perfect operating condition, repair and sanitation and that the Project Facility is transferred to the Authority upon expiry/termination of this Agreement is in a perfect working condition, normal wear and tear excepted, having regard to its construction, life and use. The operation and maintenance of the Project Facilities so as to keep them in excellent operating condition is an essential condition of this Agreement;
- (s) The Concessionaire shall provide, manage, operate and maintain including

upgradation of the site infrastructure in accordance with the Specifications and Standards and Good Industry Practice such that the Project/Project Facilities is operated and run efficiently, smoothly, continuously and without any hindrance or inconvenience to the users thereof;

(t) The Concessionaire shall employ qualified and skilled personnel and manpower to efficiently operate and manage the Project Facilities at its cost and consequence. Preference shall be given to Kannada speaking local personnel based on the recommendations of the Dr. Saorjini Mahishi Report, technical, non-technical, skilled and unskilled; The Concessionaire shall adopt the employment policies of the Government of Karnataka as notified from time to time;

(u) The Concessionaire shall make appropriate arrangements for security at the Project Site and abide by the security regulations/procedures prescribed by the Authority or any Government Authority from time to time. The Concessionaire may secure assistance of the police force for maintaining security upon payment of charges for such services, if required.

17.1.2 The Concessionaire shall remove promptly from the Project / Project Facilities all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. For the avoidance of doubt, it is agreed that the material excavated shall be carried to and deposited at a designated area as demarcated by the Authority and situated adjacent to the Project Site. Further, in case of excess of the material excavated, the Concessionaire shall with prior approval of the Authority be permitted to transport the same outside the Project Site, provided the same would be brought back to the Project Site for filling purpose. However, in the event of the material excavated being transported outside the Project Site permanently, the royalty as applicable for the same shall have to be remitted to the Government of Karnataka and in addition shall make a payment of an amount on per metric cube basis to the Authority, the rate of which shall be determined by the Independent Engineer on the basis of the prevailing market rates.

17.1.3 It is agreed upon by the Parties hereto that the Authority shall develop and maintain, in conformity with Good Industry Practice, approach road within its land (the said 408 acres within which the Project Site is situated) at all times, upto the boundary of the Project Site.

17.2 Maintenance Requirements

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

Notwithstanding anything to the contrary contained in this Article 17, the Concessionaire shall at all times carry out or procure at its cost and expense the O&M Works and maintain (including routine, regular, periodic and preventive maintenance), provide, procure, manage, keep in good operating condition and repair, renew, replace, restore, rectify and upgrade to the extent reasonably necessary the Project / Project Facilities, normal wear and tear excepted, with the skill, diligence and expertise of operators of similar facilities and in conformity with the provisions hereof, including the Specifications and Standards and Good Industry Practice. All such maintenance, repair and O&M Works shall be carried out in such a way as to cause least inconvenience to users of the Project / Project Facilities.

17.3 Maintenance Manual

- 17.3.1 No later than 90 (ninety) days prior to the respective Scheduled Completion Dates, 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 Project Facilities in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority 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 Assets, including replacement thereof, such that their overall condition conforms to Good Industry Practice.

17.4 Maintenance Programme

- 17.4.1 On or before COD1 and COD2 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 Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements,

Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

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

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, 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 Project / Project Facilities 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.

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 Project / Project Facilities, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project / Project Facilities to Users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Concessionaire shall re-commission the Project / Project Facilities or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project / Project Facilities and shall notify the Authority of the same without any delay.
- 17.6.3 Any de-commissioning or closure of any part of the Project / Project Facilities and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of display of notice at the Project / Project Facility.
- 17.6.4 No claim or compensation shall be due and payable to the Concessionaire on account of de-commissioning or restricted use of the Project / Project Facilities or any part thereof during an Emergency.

17.7 Closure of a Project Facility

- 17.7.1 The Concessionaire shall not close any section of the Project / Project Facilities within the CMDO and/or OMDO for undertaking maintenance or repair works, except with 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 Authority, 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 Authority.
- 17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any Project Facility / Section of the Project Facility for a period not exceeding 2 (two) continuous days for reasons of breakdown with information to the Independent Engineer and Authority.

- 17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated Project Facility / Section of the Project Facility for the period specified therein, and in the event of any delay in re-opening such Project Facility / Section of the Project Facility, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for that Section, as computed by the Independent Engineer, for each day of delay until the Project Facility / Section of the Project Facility has been re-opened.

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 Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, 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 Authority under this Agreement, including the right of Termination thereof.
- 17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by the Independent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

- 17.9.1 In the event the Concessionaire does not maintain and/or repair the Project / any of the Project Facilities or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rights and remedies provided under Clause 17.8.
- 17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to

the Authority 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 Authority under this Clause 17.9.2 and debit the same to O&M Expenses.

17.10 Overriding powers of the Authority

- 17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for 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 Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of 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 Article 39, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 39. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to the Project / Project Facilities

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

17.12 Modifications to the Project / Project Facilities

17.12.1 The Concessionaire shall not carry out any material modifications including upgradations to the CMDO and/or OMDO of Project Facilities save and except where such modifications are necessary for the Project to operate in conformity with the provisions of the Agreement, Specifications and Standards, Maintenance Requirements, Good Industry Practice, Safety Requirements and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 30 (thirty) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 30 (thirty) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.12.2 The provisions of this Agreement, insofar as they relate to Constructions Works and Tests, shall apply mutatis mutandis to all the Construction Works forming part of modification to the Project / Project Facilities.

17.13 Excuse from performance of obligations

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

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

The Concessionaire shall, without any delay, notify the Authority and the Independent Engineer in case of non-availability of the Project/Project Facilities due to the above reasons.

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

17.14 Marketing of Project/ Project Facilities

- (a) The Concessionaire shall be solely responsible for the establishment, operations and marketing of the Project / Project Facilities. The Concessionaire shall be entitled to commence such marketing at its cost and risk prior to the Appointed Date and to accept Project Revenues and other considerations from such users from such date; provided that Authority shall not be liable in any manner whatsoever to any Person in this behalf and the Concessionaire shall disclose the same to such Users.
- (b) The Concessionaire shall ensure that the advertising and marketing of the Project / Project Facilities is carried out in a manner that is consistent with and not in derogation of or conflict with any terms or provisions of this Agreement and the Applicable Laws.

17.15 Advertising on the Project

- 17.15.1 The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Project Site / Project.
- 17.15.2 Notwithstanding to anything contrary contained in Clause 17.15.1, with the approval of the Authority, the Concessionaire shall designate an area within the Project Site where an advertisement / Hoarding can be displayed, subject to the same being that solely for Marketing the Project / Project Facilities or display of information / advertisement to Users pertaining to any forthcoming event solely at the Project / Project Facilities. For the avoidance of doubt, it is agreed that size of the hoarding and location of the same shall be with the approval of the Authority.

Further, for the purpose of this clause, “commercial advertising”, “display” or “hoarding” shall mean outdoor boards / hoardings including but not limited to those erected on unipole / multi-pole or framed structures and requiring approvals / licencing as per Advertisement bye-laws under the Karnataka Municipal Corporations Act or any licencing authority of the Government.

17.16 Users who require special assistance

- 17.16.1 The Concessionaire shall ensure that the Project / Project Facilities meet the needs of elderly persons and physically and/or visually challenged Users, including the provision of ramp ways and/or elevators, special seating / seating area, modified toilets, wheel chairs and earmarked parking slots in conformity with Specifications and Standards and Good Industry Practice, and at no extra cost to such Users.
- 17.16.2 The Concessionaire shall procure provision of a child care room and facilities within the Project, at no additional cost to Users.
- 17.16.3 The Concessionaire shall set up and operate first aid facilities within the Project.

ARTICLE - 18

**OPERATIONS OF INTERNATIONAL CONVENTION CENTRE AND
EXHIBITION HALLS**

18.1 Operations and Maintenance of the International Convention Centre and Exhibition Halls

18.8.1 The Concessionaire shall undertake the operations and maintenance of the International Convention Centre and Exhibition Halls in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

18.8.2 The Concessionaire shall operate the International Convention Centre and Exhibition Halls in accordance with the Specifications and Standards set forth in **Schedule-D**

18.8.3 The Concessionaire shall procure and maintain validity during the Concession Period of the memberships in the name of the Project / Project Facilities, of at least 2 (two) associations pertaining to the Convention Centre and Exhibition Halls, respectively, as per Clause 5.5 of this Agreement.

18.8.4 The Concessionaire shall ensure that the International Convention Centre and Exhibition Halls are compliant to the Standards and Specifications, if any, required for obtaining and maintaining the memberships as per clause 18.8.3.

18.8.5 The Concessionaire shall at all times keep free from obstruction all areas meant for circulation of Users

18.8.6 The Concessionaire shall provide non-discriminatory access to all Users of the International Convention Centre and Exhibition Halls in accordance with the Applicable Laws and the provisions of this Agreement. For the avoidance of doubt, limiting of access only to invitees / delegates shall not be construed as discrimination hereunder.

18.8.7 The Concessionaire shall at all times provide, or cause to be provided, within the International Convention Centre and Exhibition Halls, all of the following:

(a) Free drinking water fountains (with RO Water Purifiers) for Users at not less than 4 (four) locations;

(b) Adequate number of Toilets (separate for Male and Female and for specially abled persons), child care room at each floor;

(c) Atleast one ATM, Foreign Exchange Counter and Information Centre, each;

(d) Adequate signage's in Kannada, English, Hindi and atleast two foreign languages;

18.2 Level of Service

- 18.2.1 The Concessionaire agrees and undertakes that the level of facilities and service in the International Convention Centre and Exhibition Halls shall at all times equivalent to the Good Industry Practices and Standards.

ARTICLE - 19

OPERATIONS OF MULTI LEVEL CAR PARKING FACILITY

19.1 Operations and maintenance of Multi-level Car Parking Facility

- 19.1.1 The Concessionaire shall implement, operate and maintain the Multi-Level Car Parking Facility (“**Car Parking Facility**”) in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 19.1.2 The Concessionaire shall regulate the use of the Car Parking Facility by third parties in accordance with the provisions of this Agreement and shall permit non-discriminatory use thereof to all passengers and visitors; provided that the Concessionaire may levy charges for the use of Car Parking Facility at market driven rates.
- 19.1.3 The Concessionaire may remove any vehicle that is parked at a place not earmarked or authorized for parking, and park such vehicle in the Car Parking Facility. If the Concessionaire is not able to shift the vehicle to the Car Parking Facility for any reason, it may immobilize the vehicle at or near the spot where it is parked. For the avoidance of doubt, the Concessionaire shall procure that any shifting or immobilizing of vehicles under the provisions of this Clause 19.1.3 is undertaken in a manner that does not cause damage to such vehicles.
- 19.1.4 The Concessionaire shall:
- (i) procure that the Car Parking Facility is used only for parking of vehicles and for no other purpose;
 - (ii) not sub-licence, assign or in any manner create an encumbrance on any part of the Car Parking Facility except in accordance with the provisions of Clause 5.2. For the avoidance of doubt, the parties hereto agree that the areas planned and constructed for the purpose of Car Parking Facility shall not be put to any alternative use.

19.2 Facilities at Car Parking Facility

The Concessionaire shall at all times provide or cause to be provided, at the Car Parking Facility, all of the following:

- (a) Free drinking water outlets at not less than 2 (two) convenient locations;
- (b) Atleast 2 (two) kiosk or outlet for vending soft beverages and snacks to user of Car Park, and operated by competing vendors;
- (c) The Concessionaire shall, adjacent to the entry or exit point of the Car Park, provide a waiting hall for the drivers, with comfortable seating for adequate capacity with proper ventilation and lighting and electrical fixtures such as fans, mobile charging points, toilets, Atleast 2 (two) Television with cable connection and a Public Address system for calling attention of drivers;

- (d) Toilets (separate for Male, Female and specially abled) and child care room; and
- (e) Adequate Safety and Security for the premise including Security Guards and CCTVs.

ARTICLE - 20

OPERATIONS OF HOTEL

20.1 Operations of Hotel

- 20.1.1 The Concessionaire shall undertake the operations and maintenance of the Hotel in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 20.2.2 The Concessionaire shall operate the Hotel in accordance with the Specifications and Standards set forth in **Schedule-D**
- 20.2.3 The Concessionaire shall procure all needful accreditations for the Hotel from respective national / international bodies / authorities pertaining to Star Certification, accreditations, etc.
- 20.2.4 The Concessionaire shall provide eco-friendly shuttle services (golf cart / battery operated cars), if need be, from the Hotel and within the Project Site to other Project Facilities including the International Convention Centre, Exhibition Halls, other Hotels, Commercial Development and any other facility that the Concessionaire may develop within the Project Site.
- 20.2.5 The Concessionaire shall provide shuttle / pick up and drop facilities to its guests to and from the Kempegowda International Airport as may be required to be offered.
- 20.2.6 The Concessionaire shall employ all trained and qualified personnel at its Hotel.
- 20.2.7 The Concessionaire shall endeavor to adopt best practices at the Hotel for solid waste management / disposal.
- 20.2.8 The Concessionaire shall ensure that the Operational Standards and Efficiencies of the Hotel is equivalent or exceeds that of its Competing Facility, if any, as described as per the term of this Agreement.

20.2 Level of Service

- 20.2.1 The Concessionaire agrees and undertakes that the level of facilities and service in the International Convention Centre and Exhibition Halls shall at all times equivalent to the Good Industry Practices and Standards.

ARTICLE - 21

OPERATIONS OF COMMERCIAL DEVELOPMENT

21.1 Operations of Commercial Development

21.1.1 The Concessionaire shall undertake the operations and maintenance of the Commercial Development, which forms part of the CMDO, OMDO or the Optional Permissible Facilities, in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.

21.2.2 The Concessionaire shall operate the Commercial Development in accordance with the Specifications and Standards set forth in **Schedule-D**

21.2.3 The Concessionaire shall endeavor operate and manage the Project Facility duly taking in to cognizance the “Hi-Street” concept, with the objective of attracting footfalls to the Project Facility during the week.

21.2.4 The Concessionaire shall ensure that the facilities in the Commercial Development complement of the Optional Permissible Facilities and acts as a catalyst for year round activities at the Project. In this regard, the Concessionaire shall endeavor to conduct events etc at the Project Facility so as to keep attracting footfalls to the Facility, especially during weekends.

21.2.5 The Concessionaire shall ensure that all billing to Users at the Commercial Development is strictly through the computer terminal linked to the Central Server of the Project and ensure that all revenue accruing to the Project Facility is recorded.

21.2 Level of Service

21.2.1 The Concessionaire agrees and undertakes that the level of facilities and service in the Commercial Development shall at all times equivalent to the Good Industry Practices and Standards including Public Safety

ARTICLE - 22

OPERATIONS OF OPEN AREAS AND GARDENS

22.1 Operations of Open Areas and Gardens

- 22.1.1 The Concessionaire shall undertake the operations and maintenance of the Open Areas and Gardens in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice.
- 22.1.2 The Concessionaire shall ensure that for the purpose of safety and security, all areas to the Project / Project Facilities including Open Areas and Gardens is access controlled and has access through CCTV Cameras.
- 22.1.3 The Concessionaire shall ensure that all Open Areas are either Landscaped or Hardscaped or paved and maintained clean.

22.2 Facilities at Open Areas and Gardens

The Concessionaire shall at all times provide or cause to be provided, all of the following:

- (i) Free drinking water fountains (with RO Water Purifiers) at not less than 2 (two) convenient locations;
- (ii) Atleast 1 (one) kiosk or outlet for vending beverages and snacks to User;
- (iii) Adequate Public Address system;
- (iv) Toilets (separate for Male and Female) at not less than 2 (two) convenient locations each;
- (v) Adequate Safety and Security including Security Guards and CCTVs;
- (vi) Adequate illumination, preferable through renewable energy sources;
- (vii) Signages in atleast two languages apart from Kannada, including location map
- (viii) Digital Display Boards for important announcements.

ARTICLE - 23

RESERVED SERVICES

23.1 Reserved Services

23.1.1 The Authority shall perform, or cause to be performed, through the designated GoK Agencies, the following services (the “**Reserved Services**”) at the Project:

- (i) Karnataka Tourism Information Counter at the International Convention Centre and/or the Exhibition Centre (to be operational within a maximum space of 5 Square meters to be provided by the Concessionaire and only during International or large Conventions and on the request and prior intimation by the Concessionaire. It is further agreed hereto that any additional space required by the Karnataka Tourism shall be at the discretion of the Concessionaire)
- (ii) City Bus (air conditioned) Operations by Bangalore Metropolitan Transport Corporation (BMTC) (to be operational only during International or large Conventions and on the request and prior intimation by the Concessionaire)
- (iii) City Bus (for Staff of the Project) (to be operational at select timings on specific route(s) and subject to viability to BMTC and based on mutual discussions between BMTC and the Concessionaire)
- (iv) Security (for Users, VIP’s and the Project) Provide adequate security after consultations with Bengaluru Police.

23.1.2 The Authority may from time to time require the Concessionaire to enter into bilateral agreements with any or all of the designated GoK Agencies for the performance of Reserved Services in accordance with Applicable Laws and Good Industry Practice. For the avoidance of doubt, the Parties expressly agree that the needful infrastructure for the Reserved Services shall be provided by the Concessionaire free of cost.

ARTICLE - 24

SAFETY REQUIREMENTS

24.1 Safety Requirements

- 24.1.1 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 and the personnel employed at the Project / Project Facilities. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in **Schedule-M** (the “**Safety Requirements**”).

In addition, the Concessionaire shall ensure that the CMDO and OMDO are designed and built / furnished with materials of specifications as per best international standards of safety including and not limited to Fire, etc., as may be required for the CMDO and/or OMDO to be compliant to for hosting any international conventions / events.

24.2 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, and costs thereof to be charged in the User Fee.

24.3 Safety Audit

The Authority shall, from time to time and in such periodic interval as it may think fit, conduct a safety audit of the Project Facilities to determine if the Project Facilities comply with the Safety Requirements. The Authority shall provide an advance notice to the Concessionaire before proceeding for such safety audit and the Concessionaire shall provide all co-operation to the Authority as it may require to conduct it. All costs and expenses regarding undertaking the safety audit shall be borne by the Concessionaire. The non-compliance of the Safety Requirement shall be considered as a Concessionaire Default under this Concession Agreement.

ARTICLE - 25

MONITORING OF OPERATIONS AND MAINTENENCE

25.1 Monthly and daily Status Reports

- 25.1.1 At all times during the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a quarterly report, in a form acceptable to the Authority, stating in reasonable detail the condition of the Project / Project Facilities including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, occupancy, events held, future bookings, etc., 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.
- 25.1.2 At all times during Operations Period, the Concessionaire shall, no later than 7 (seven) days after the close of each quarter, furnish to the Authority and the Independent Engineer a quarterly management report which shall be a summary of:
- (a) key performance indicators achieved in the quarter, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
 - (b) key operational hurdles and deliverables expected in the succeeding quarter alongwith strategies for addressing the same and for otherwise improving the Project's operational performance;
 - (c) key financial parameters for the quarter (with monthly break-up), as benchmarked against each monthly and quarterly budget, the reasons for shortfall, if any, and proposals to remedy the same; and
 - (d) a monthly budget for the succeeding quarter (month wise), along with strategies for improving the Project's financial performance.
 - (e) a monthly statement of events held, occupancy, future bookings, reservations, breakup of the revenue stream from different events, activities etc.

25.2 Reports of unusual occurrence

In case of occurrence of any accident or unusual incident on the Project Site / Project / Project Facilities, the Concessionaire shall, prior to the close of such day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual incidents on the Project relating to the safety and security of the Users and Project. A weekly, monthly, quarterly and yearly summary of such reports shall also be sent within 3 (three) days of the closing of each week, month, quarter and year, as the case may be. For the purposes of this Clause 25.2, accidents and unusual occurrences on the Project Site shall include:

- (a) death or injury to any person;

- (b) smoke or fire;
- (c) any damage or obstruction that affects Users of the Project;
- (a) Security Threat;
- (b) any theft or robbery;
- (c) Any damage to the Project / Project Facilities;
- (d) Outages or failure of electricity supply or water supply; and
- (e) such other relevant information as may be reasonably required by the Authority or the Independent Engineer.

25.3 Inspection

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

25.4 Tests

For determining that the Project 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. The costs incurred on such tests, shall be borne by the Concessionaire.

25.5 Remedial measures

- 25.5.1 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 23.4 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
- 25.5.2 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 Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 25.5 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in

accordance with the provisions of Clause 17.8 and to carry out the remedial measures in accordance with the provisions of Clause 17.9.

- 25.6 At all times during the Operation Period, the Concessionaire shall, no later than 90 (ninety) days after the completion of each Accounting Year, furnish to the Authority and the Independent Engineer, an annual Economic Impact Assessment Report, which shall be carried out by an independent accredited assessment professional agency, in a form acceptable to the Authority, stating in reasonable detail the impact of the Project in relation to, inter alia, employment and revenue generation, ancillary economic activities, contribution to GDP of the State etc. for every year of operations.
- 25.7 At all times during the Operation Period, the Concessionaire shall, no later than 90 (ninety) days after the completion of each Accounting Year, furnish to the Authority and the Independent Engineer, an annual land utilization audit report to be carried out by an accredited land audit agency, in a form acceptable to the Authority, stating in reasonable detail the use of the land by the Concessionaire for every year of operations.

ARTICLE - 26

FOOTFALL CENSUS AND COMPUTER SYSTEMS

26.1 Footfall Census

The Concessionaire shall collect and record data relating to daily footfalls to the Project / Project Facilities and a monthly statement of such data shall be compiled and furnished by the Concessionaire to the Authority substantially in the forms specified in **Schedule-N**, on quarterly basis.

26.2 Computer Systems and network

Notwithstanding anything to the contrary contained in clauses 5.29 and 5.30 of this Agreement, the Concessionaire shall install, operate and maintain a computer system with round-the-clock connections to the networks of the Authority or its designated agency, as the case may be, for exchange of data and information useful or necessary for efficient and transparent operations and management of the Project / Project Facilities. For this purpose, it shall follow such protocol for Electronic Data Interchange (the “**EDI**”) as the Authority or its designated agency may specify from time to time.

ARTICLE - 27

KEY PERFORMANCE INDICATORS

27.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project / Project Facilities such that it achieves or exceeds the performance indicators specified in this Article-27 (the “**Key Performance Indicators**”).

27.2 Operation of Convention Centre and Exhibition Halls

27.2.1 The Concessionaire shall operate and maintain the Convention Centre and Exhibition Halls such that it conforms to the Key Performance Indicators specified in this Clause 27.2.

27.2.2 The Concessionaire shall, at all times during the Operation Period, operate and maintain the Convention Centre and Exhibition Halls in accordance to Applicable Laws, Applicable Permits and Good Industry Practice.

27.2.3 The Concessionaire shall at all times procure that:

- (a) the Project Facilities and its toilets are clean, hygienic and free of odour;
- (b) there is adequate lighting within the Project in conformity with the Specifications and Standards;
- (c) all lifts, escalators, public address systems, sound & acoustic systems, lighting systems, safety & security system, etc. are upgraded from time to time as per the industry standard and function efficiently and their availability is no less than 98% of the scheduled operating time in a month;
- (d) all entry and exit points, passages, circulation areas and vehicular traffic are so managed that they have do not have a queue waiting time not exceeding 2(two) minutes.

27.2.4 Damages for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Clause 27 and for any shortfall in the average performance during a quarter, it shall pay Damages within 30 (thirty) days of the close of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 27.2.4 shall, be determined at the rate of 1% for every loss of revenue equivalent to 10% of revenue in any single performance indicator specified in this Article 27; provided, however, that wherever the shortfall cannot be quantified, the Damages shall be determined at the rate of 2% of the total revenue from the Project Revenues of the relevant quarter; provided further that the Authority may fully or partially waiver its right to impose 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.

27.3 Operation of Car Parking Facility

27.3.1 The Concessionaire shall operate and manage the Car Parking Facility such that it conforms to the Key Performance Indicators specified in this clause 27.3.

27.3.2 The Concessionaire shall, at all times after COD2, procure that:

(a) the average time taken from entry into the Car Parking Facility to parking at a vacant slot, including time for payment of Fee, shall not be more than 5 (five) minutes for at least 95% (ninety five per cent) of the Users thereof;

(b) the average time taken to depart from the parking slot to the exit gate, including the time for payment of Fee, shall not be more than 5 (five) minutes for at least 95% (ninety five per cent) of the Users thereof; and

(c) the provisions of space and equipment, and the use thereof, is such that handling of vehicles is safe and efficient in conformity with Good industry Practice.

27.3.3 The Concessionaire shall procure that the Car Parking Facility and facilities thereof are kept clean and with adequate lighting.

27.3.4 The Concessionaire shall provide adequate numbers of toilets at convenient locations in the Car Parking Facility as per the terms of this Agreement and keep them in clean and hygienic condition.

27.4 Service Quality Requirements

The Concessionaire shall procure and ensure that it conforms and complies with the Service Quality Requirements set forth in Schedule-L.

27.5 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 Key Performance Indicators specified in this Article-27 along with an analysis of the reasons of failure, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Project. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 27.2.4.

ARTICLE - 28

INDEPENDENT ENGINEER

28.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm through a transparent & competitive selection process set forth in **Schedule-Q**, to be the independent consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 180 (one hundred eighty) 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 Authority may in its discretion renew the appointment, or appoint another firm through a fresh process as set forth in Schedule-Q, to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

It shall be endeavored to appoint an Independent Engineer having its office in the nearest City to the Project Site.

28.2 Duties and functions

- 28.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in **Schedule-R**. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article-28 shall include the entire development including the development of other Optional Permissible Facilities, if any, on the Project Site.
- 28.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule-R
- 28.2.3 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.
- 28.2.4 A true copy of all communication sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.
- 28.2.5 In the event the Independent Engineer delays in carrying out the tests as contemplated under Clause 14.1.1, the Authority shall impose exemplary penalties on the Independent Engineer and shall ensure that Tests are completed in time either by the Independent Engineer or any substitute thereof.

28.3 Remuneration

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

28.4 Termination of appointment

28.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 28.1.

28.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the decision of the Authority thereon shall be final. . In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 28.1.

28.5 Authorised signatories

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

28.6 Dispute resolution

If either Party disputes any advice, instruction, determination, direction 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.

28.7 Interim Arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority, may, in the interim, designate and authorise any

person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 28.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

28.8 Nodal Officer

The Authority shall nominate a Person who shall have the overall responsibility, to oversee the Project, act as the single point of contact between the Concessionaire and the Authority for co-ordinating the relevant approvals of all development proposals/plans, prepared as per the Specification & Standards, in relation to the Project and to monitor the implementation of the Project by the Concessionaire for compliance with the provisions of this Concession Agreement (herein the “**Nodal Officer**”); provided that the Authority shall not be liable in any manner for such monitoring undertaken by it or the Nodal Officer or his representative and the Concessionaire shall remain liable for performing its obligations, duties and liabilities under this Concession Agreement as well as conformity of all development proposals/plans with the Specification & Standards.

Provided further that any failure on the part of the Nodal Officer or his representative in respect of such monitoring shall not amount to any consent or approval by the Authority of the Concessionaire’s activities and shall not amount to a certification of compliance, by the Authority that the Concessionaire has complied with Applicable Law.

ARTICLE - 29

OTHER OPTIONAL PERMISSIBLE FACILITIES

29.1 Other Optional Permissible Facilities

- 29.1.1 The Concessionaire shall undertake the development, operations and maintenance of the other Optional Permissible Facilities, it may deem fit, subject to the same in accordance with the provisions of Schedule-B, Schedule-C and Schedule-D of this Agreement, Applicable Laws and Good Industry Practice.
- 29.1.2 The Other Optional Permissible Facilities shall be considered as an integral part of the Project and shall be permitted to be developed by the Concessionaire, subject to the availability of land in the Project Master Plan and the same not affecting the overall concept and theme of the Project Master Plan and subject to the approval of the Authority.
- 29.1.3 Unless otherwise agreed by the Authority in writing, no other developments shall be permitted in the Project Site, other than the Other Optional Permissible Facilities specified in this Agreement.

PART IV

FINANCIAL COVENANTS

ARTICLE - 30

FINANCIAL CLOSE

30.1 Financial Close

30.1.1 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 Authority in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 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.

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

30.2 Termination due to failure to achieve Financial Close

30.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 39.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 30.1.1 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 off by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 30.2.1 shall not apply.

30.2.2 Upon Termination under Clause 30.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof . as Damages; provided, however, if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, or has occurred in the event of

occurrence of a Force Majeure Event under Clause 39, it shall, upon Termination, return the the appropriated proceeds of the Performance Security along with the Damages due and payable under Clause 4.2.

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ARTICLE - 31

GRANT / PREMIUM

31.1 Grant (Applicable only in case Grant is sought by the Selected Bidder)

31.1.1 The Authority agrees to provide to the Concessionaire a financial support for the Construction of the CMDO, by way of a Grant equal to the sum set forth in the Bid, namely, [Rs. (Rupees.....)], in accordance with the provisions of this Article-31 (the “Grant”).

31.1.2 The Grant shall be credited in three equal annual installments to the Escrow Account of the Concessionaire, over a period of three years, as per the following milestones:

Installments of the Grant	Milestone Achieved
1st	(i) On receipt of all Statutory Approvals for the Project / CMDO (ii) On completion of excavation at site for foundation for the CMDO (iii) On certification of above by the Independent Engineer (iv) On submission of an unconditional and irrevocable Bank Guarantee equivalent to the installment Amount, that shall remain valid until the submission of utilization Certificate for the total Grant.
2nd	(i) On submission of utilization certificate for the 1 st installment (ii) On completion of 50% of the Construction of the CMDO (Physical as well as Financial) (iii) On certification of above by the Independent Engineer
3rd	(i) On submission of utilization certificate for the 2 nd installment (ii) On furnishing a certificate from the Statutory Auditor of the Concessionaire that the Cost of Construction of the CMDO is not less than the total Grant being availed by the Concessionaire. (iii) On furnishing of the Completion Certificate/Provisional Certificate by the Independent Engineer

31.1.3 The Grant shall be exclusively applied by the Concessionaire for fulfilling its obligations related to the construction of CMDO, and under no circumstance will it be utilised for the CMDO or the Optional Permissible Facilities or for payments to Consultants, Statutory Fees, re-payment of advances to shareholders / lenders / Investors, administrative expenses of the Concessionaire, etc.

31.1.4 The Grant shall be subject to the actual cost of construction of the CMDO and under no circumstances shall exceed the same.

- 31.1.5 The Concessionaire shall utilise the Grant only for releasing payments to its contractors / sub-contractors / vendors, etc. of the CMDO, directly from the Escrow Account through RTGS / NEFT modes only.
- 31.1.6 The disbursement of Grant by the Authority shall be in the following manner:
- (i) The proportion of Grant disbursed by the Authority shall be equal to the proportion of funding i.e. the Financial Package under the Financing Agreement, by the Senior Lenders, and shall be released upon release of corresponding proportionate share by the Senior Lenders or Equity Shareholders.
 - (ii) The 3 Installments shall be released in 3 equal installments, that shall be released spreading over 3 financial years.
- 31.1.7 The Concessionaire shall maintain its books of accounts, site registers, bills of Contractors / Sub-Contractors including measurement records sheets / books, pertaining to the construction of the CMDO, that shall be made available to the Authority / Authorised Representatives and/or to the Auditors of the Authority and/or to the Independent Engineer for inspection / scrutiny / verification.
- 31.1.8 The Concessionaire shall negotiate with the Bank for a competitive interest rate on the Grant deposited in the Bank Account until the time of its utilization. The interest accrued shall be also exclusively used strictly and only for the purpose of construction of the CMDO.
- 31.1.9 Upon utilization of the installment of the Grant released by the Authority, the Concessionaire shall submit an utilization certificate duly certified by its Auditors, for requesting for release of the next installment that shall be subject to completion of the corresponding milestone, in accordance with the provisions of this Agreement;
- 31.1.10 Upon release of all installments of the Grant and utilization of the same, the Concessionaire shall provide a Final Utilization Certificate for the same, duly certified by its Statutory Auditor. Such Certificate shall be submitted within 3 weeks of utilization of the Grant.

31.1 PREMIUM (*Applicable only in case Premium is Offered by the Selected Bidder*)

31.1.1 Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority, a premium (the “**Premium**”) in the form of an onetime upfront payment of [Rs. (Rupees.....)], in accordance with the provisions of this Article-31.

- 31.1.2 The Concessionaire acknowledges that the Premium shall be paid to the Authority as a Conditions Precedent to the Agreement, alongwith applicable GST.

31.1.3 The Premium shall be paid in 3 installments, as below:

- (i) 50% which has been paid within 60 days of the LoA and as a precondition to the Signing of this Agreement
- (ii) 50% within the Conditions precedent period.

ARTICLE - 32

NOT APPLICABLE

ARTICLE - 33

CONCESSION FEE & REVENUE SHARE

33.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority, by way of annual concession fee (the “**Concession Fee**”), a sum of Rs. 1000 (Rupee one thousand only) alongwith applicable GST, per annum, for each Accounting Year.

33.2 Revenue Share

33.2.1 Without prejudice to the provisions of Clause 33.1, the Concessionaire agrees to pay to the Authority for the Accounting Year commencing from COD1 and for any such period prior to the COD1, when the commercial operations / transactions of any project component has commenced, a Revenue Share (the “**Revenue Share**”) in the form of a percentage of the Project Revenues during that Accounting Year, net of any taxes on the Project Revenues along with the applicable GST, etc., if any, thereon.

The % (per cent) of the Project Revenues, which has to be paid as Revenue Share by the Concessionaire to the Authority, shall be as below:

i. Upon achieving COD1:

- (a) From date of COD1 upto date of COD2 - 2.5% of Gross Revenues for each Accounting Year.

ii. Upon achieving COD2:

- (a) From date of COD2 to 5 Years from Operation – 2.5% of Gross Revenues for each Accounting Year;
- (b) 5 Years to 10 years – 5% of Gross Revenues for each Accounting Year;
- (c) 10 years to 15 years – 7.5% of Gross Revenues for each Accounting Year;
- (d) 15 years to 20 years – 10.0% of Gross Revenues for each Accounting Year;
- (e) 20 years to 25 years – 12.50% of Gross Revenues for each Accounting Year;
- (f) 25 years to 30 years – 15.00% of Gross Revenues for each Accounting Year.

iii. Upon automatic renewal of Concession Period for 2nd term of 30 years:

- (a) 15% of Gross Revenues for each Accounting Year.

For the purpose of clarity:

- a) the Revenue Share shall, commence from the day of COD1 / COD2 (and for any such period prior to the COD1 / COD2 when the commercial operations / transactions of any project component, has commenced ,whichever is earlier).
- b) The Revenue Share shall apply to all Project components developed / operated on the Project Site.
- c) Project Revenue shall refer to and include any & all revenues from all sources or amounts of money and the total receipts of business of the Concessionaire for any period, that arise, accrue to and/or are received (or which would have been received) from the operation of Project, CMDO, OMDO, Other Developments

(including Retail / Commercial Development), Project Facilities, including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to – **(i)** the sub-lease/license/sub-license of built up space on the Project Site; **(ii)** exploitation in any manner whatsoever of the Project Facilities by any Person, including but not limited to capital receipts, upfront sub-lease payments, non-refundable deposits, advances, registration payments, installments received from sub-lessees, sub-lease charges, fees, tariff, parking charges, profits on maintenance charges, profits on service charges, etc; **(iii)** revenues from guests, visitors, persons utilizing the facilities, interest earned on refundable deposits, etc.

33.2.2 The Revenue Share payable under Clause 33.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

33.3 Payment of Concession Fee

33.3.1 The Concession Fee payable for each Accounting Year under the provisions of this Article 33 shall be due and payable in 2 (two) equal half yearly installments i.e. 30th September and 31st March of each year. Within 7 (seven) days of the beginning of each half Accounting Year, the Concessionaire shall pay to the Authority against the Concession Fee, a provisional amount calculated on the basis of the actual revenue share of the immediately preceding half Accounting Year, as the case may be, and final settlement thereof, based on the audited accounts of the Concessionaire, shall be made within 120 (one hundred twenty) days of completion of the respective Accounting Year. In case of the first half year, the Concessionaire shall make an adhoc provisional amount payment of Rs.50,00,000/- (Rupees Fifty lakhs).

The Concession Fee payable shall be payable to the Authority within the due date, failing which interest at the Prime Lending Rate of SBI + 2% shall be payable by the Concessionaire on the amount due, that shall be computed from the date of the amount being due until and including the day of remittance of the amount to the Authority.

Applicable GST etc., shall be remitted in addition to the Concession Fee, additionally.

33.4 Verification of Project Revenues

33.4.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Project Revenues honestly and faithfully, depute its representatives to the Project, centralized controls of the revenue 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 to the Project / Project Facilities.

33.4.2 If the verification of revenues pursuant to this Clause 33.4 demonstrates that the Project Revenues is more than the amount reported by the Concessionaire, the difference of amount due to the Authority shall be multiplied by 180 (one hundred and eighty) and the amount thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any dispute relating to the assessment, the decision of the Authority thereon shall be final.

ARTICLE - 34

USER FEE

34.1 Collection and appropriation of User Fee by the Concessionaire

34.1.1 On and from the COD1 and/or COD2 till the Transfer Date, the Concessionaire shall have the sole and exclusive right to determine, demand, collect and appropriate the Project Revenues in respect of the use of Project Facilities or the goods, services facilities or amenities provided thereat and shall have the right to demand, collect and appropriate fee from the Users of the Project Facilities developed within the Project Site in accordance with this Agreement; provided that the same shall be in compliance with the requirements, if any, under the Applicable Laws, terms of Applicable Permits and Good Industry Practice.

34.2 Revision of User Fee

34.2.1 The Parties hereto acknowledge and agree that the Concessionaire will be free to revise the Fee from time to time during the Concession Period based on Good Industry Practice.

34.3 Fee Contractor

The Concessionaire may at its discretion appoint a Fee Contractor or any other person to collect the Fee 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 Fee in accordance with this Agreement.

ARTICLE - 35

EFFECTS OF VARIATION IN ESTIMATED REVENUES

35.1 Effects of variation in estimated Revenues

- 35.1.1 The Parties hereto this Agreement, duly acknowledge that the revenues estimated for Projects of such nature are subject to variations in market trends and as the estimates provide only a range and fair idea of the Project.
- 35.1.2 The Concessionaire hereby agrees to that it has, based on its expertise and industry trends, submitted its proposal for the Project, duly considering the risk of variation in the estimated revenues.
- 35.1.3 Notwithstanding anything contrary to the content in clauses 35.1.1 and 35.1.2, the Parties hereto this Agreement agree to bear their respective and corresponding effects of variations in the estimated revenues, without setting out any claims on either Parties.

ARTICLE - 36

ESCROW ACCOUNT

36.1 Escrow Account

- 36.1.1 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.
- 36.1.2 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 Authority, the Escrow Bank and the Senior Lenders through the Lender’s Representative, which shall be substantially in the form set forth in **Schedule-T**.

36.2 Deposits into Escrow Account

- 36.2.1 The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:
- (a) all monies received in relation to the Project from Banks, other lenders, shareholders, the Authority or its representatives, and insurance companies;
 - (b) All fee any other revenues from or in respect of the Project / Project Facilities, including the proceeds of any rentals, deposits, advances, capital receipts or insurance claims; and
 - (c) All payments by the Authority, after deduction of any outstanding Concession Fee;
- Provided that the Senior Lenders may make direct disbursements to the EPC Contractors / Contractors in accordance with the express provisions contained in this behalf in the Financing Agreements.

36.3 Withdrawals during Concession Period

- 36.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, inter alia, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due:
- (a) all taxes due and payable by the Concessionaire for and in respect of the Project / Project Facilities developed on the Project Site;
 - (b) all payments relating to construction of the Project / Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

- (c) O&M Expenses, subject to the ceiling set by the Independent Engineer in accordance with Good Industry Practice;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) all payments and Damages certified by the Authority 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.

36.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 36.3.1, except with the prior written approval of the Authority.

36.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project / Project Facilities developed on the Project Site;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) retention and payments relating to the liability for defects and deficiencies set forth in Article-44;
- (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 36.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article-43.

36.4.2 The provisions of this Article-36 and its instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 36.4.1 have been discharged.

ARTICLE - 37

INSURANCE

37.1 Insurance during Concession Period

37.1.1 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 Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and the insurer shall pay the proceeds of the 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.

37.2 Insurance Cover

37.2.1 Without prejudice to the provisions contained in Clause 37.1, the Concessionaire shall, during the Concession Period, procure and maintain Insurance Cover including but not limited to the following:

- (i) Loss, damage or destruction of the Project / Project Facilities / Project Assets, at replacement value;
- (ii) comprehensive third party liability insurance including injury to or death of personnel who may enter the Project Site / Project / Project Facilities;
- (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 and not otherwise covered in items (i) to (v) above.

37.3 Notice to the Authority

No later than 30 (thirty) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this **Article-37**. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the decision of the Authority shall be final.

37.4 Evidence of insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article-37 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

37.5 Remedy for failure to insure

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

37.6 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 37 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

37.7 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire' may otherwise have or acquire in or from or in any way

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

37.8 Application of insurance proceeds

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

37.9 Compliance with Conditions of Insurance Policies

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

ARTICLE - 38

ACCOUNTS AND AUDIT

38.1 Audited Accounts

- 38.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Realisable / Realised Fee and other revenues derived / collected by it from or on account of the Project / Project Facilities developed on the Project Site 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 the Concessionaire under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by the Concessionaire under this Agreement.
- 38.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 38.1.3 On or before the thirty-first day of May each year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on (a) the Project Revenues of the Project accruing from all revenue streams of the Project Facilities on the Project Site including break-up therefor, (b) the total Premium payable to the Authority for the corresponding period, and (c) such other information as the Authority may reasonably require.
- 38.1.4 The Concessionaire shall maintain books of accounts recording all its payment receipts (including all payments made to Contractors, suppliers, vendors, sub-contractors, etc. towards the construction of the Project / Project Facilities developed at the CMDO on the Project Site), 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 Audited Statement of Accounts pertaining to the utilization of the Grant (if provided by the Authority) and interest, if any accrued from the same, towards the construction of the CMDO. The Audited Statement alongwith the Asset Register and list shall be duly certified by the Statutory Auditor of the Concessionaire.

38.2 Appointment of Auditors

- 38.2.1 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-U. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 38.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditor being appointed from the Panel of Chartered Accountants.
- 38.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matter, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 38.2.4 In the event that the Grant exceeds 20% (twenty per cent) of the Total Project Cost, the authority 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.

38.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under clause 25.5.

38.4 Set-Off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by the Authority of its rights under this clause 38.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

38.5 Dispute Resolution

In the event of there being any difference between the finding of the Additional 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 Authority by recourse to the Dispute Resolution Procedure.

PART V

FORCE MAJEURE AND TERMINATION

ARTICLE - 39

FORCE MAJEURE

39.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 39.2, 39.3 and 39.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (a) is beyond the reasonable control of the Affected Party, and (b) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (c) has Material Adverse Effect on the Affected Party.

39.2 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 Project Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project / Project Facilities for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 39.3;
- (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 equipment in India if such delay or failure is caused outside India by an 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 judgment or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of

the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

- (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.

39.3 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 User Fee by the Concessionaire for a continuous period exceeding 7 (seven) days in an Accounting Year;
- (e) any failure of the Authority to permit the Concessionaire to continue with the construction works, with or without modifications, in the event of stoppage of such works after discovery of any geological or archeological finds or for any other reason;
- (h) 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;
- (i) any Indirect Political Event that causes a Non-Political Event; or
- (k) any event or circumstances of a nature analogous to any of the foregoing.

39.4 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 46 and its effect, in financial terms, exceeds the sum specified in Clause 46.1;
- (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 Contracts; 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.

39.5 Duty to report Force Majeure Event

39.5.1 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 39 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.

39.5.2 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

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

- 39.5.3 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 39.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

39.6 Effect of Force Majeure Event on the Concession

- 39.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1 for fulfillment of Conditions Precedent and in Clause 30.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event. In addition, the period set forth for achieving the COD1 and/or COD2 shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD1 and/or COD2, 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 COD1 and/or COD2, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

39.7 Allocation of costs arising out of Force Majeure

- 39.7.1 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.

39.7.2 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 Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of 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.

39.7.3 Save and except as expressly provided in this Article 39, 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.

39.8 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 39, 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.

39.9 Termination Payment for Force Majeure Event

- 39.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.
- 39.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
- (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.
- 39.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 42.3.2 as if it were a Authority Default.
- 39.9.4 In case of such termination prior to COD1, the unexpended amount of the Grant provided by the Authority shall be computed by an Audit and shall be taken into account for adjustment with the Termination Payment payable to the Concessionaire.

39.10 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.

39.11 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 - 40

COMPENSATION FOR BREACH OF AGREEMENT

40.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 40.6, in the event of the Concessionaire being in default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 40.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

40.2 Compensation for default by the Authority

Subject to the provisions of Clause 40.6, in the event of the Authority being in 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 default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. However, it is clarified that in the event this Agreement is terminated pursuant to Authority's default, the Concessionaire shall only be entitled to the Termination Payment specified in Clause 42.3 and no additional compensation shall be payable to the Concessionaire. 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 default but shall not include loss of 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.

40.3 Extension of Concession Period

Subject to the provisions of Clause 40.6, in the event that a default or breach of this Agreement set forth in Clause 40.2 causes delay in achieving COD1 and/or COD2 or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 40.2, extend the Concession Period, such extension being equal in duration to the period by which COD1 and COD2 were respectively delayed or the collection of Fee remained suspended on account

thereof, as the case may be; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

40.4 Compensation for Competing Facility

40.4.1 Subject to the provisions of Clause 40.6, in the event that a Competing Facility is commissioned or operated in breach of this Agreement, the Authority shall pay to the Concessionaire, for each day of breach, compensation in a sum equal to the difference between the average daily Project Revenues and the projected daily Project Revenues until the breach is cured by lapse of time. The Projected Daily Fee hereunder shall be an amount equal to the Average Daily Fee in the immediate preceding Accounting Year prior to such opening or operation of the Competing Facility, increased at the close of every month by 0.5% (zero point five per cent) thereof. For the avoidance of doubt, the Average Daily Fee for the purposes of this Clause 40.4 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.

40.4.2 Payment of compensation under this Clause 40.4 shall be deemed to cure the breach of this Agreement so long as the Authority continues to pay compensation hereunder.

40.5 Compensation to be in addition

Compensation payable under this Article 40 shall be in addition to, and without prejudice to, the other rights and remedies of the Parties under this Agreement including Termination thereof.

40.6 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 - 41

SUSPENSION OF CONCESSIONAIRE'S RIGHTS

41.1 Suspension upon Concessionaire Default

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

41.2 Authority to act on behalf of Concessionaire

- 41.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all User Fee and revenues under and in accordance with this Agreement and deposit the same in the same Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for meeting the O&M Expenses and for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 36.3.
- 41.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Contracts, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 41.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project/ Project Facilities and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

41.3 Revocation of Suspension

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

41.4 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 Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 41.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

41.5 Termination

41.5.1 At any time during the period of Suspension under this Article 41, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 41.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 42 as if it is a Concessionaire Default under Clause 42.1.

41.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked or extended within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 41.1, 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 Authority upon occurrence of a Concessionaire Default.

ARTICLE - 42

TERMINATION

42.1 Termination for Concessionaire Default

42.1.1 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 Authority or due to Force Majeure. The defaults referred to herein shall include the following:

- (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 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to meet the Conditions Precedent or cure the Concessionaire Default, as the case may be, for which whole or part of the Performance Security was appropriated, within a Cure Period of 120 (one hundred twenty) day;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project/ Project Facilities without the prior written consent of the Authority;
- (e) COD1 and/or COD2 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 Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Contracts 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 Contracts, 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 Contracts; 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 Contracts;
- (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Contracts 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 Contracts remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfill any obligation, for which failure Termination has been specified in this Agreement;
- (w) the Concessionaire issues a Termination Notice in violation of the provisions of the Agreement;
- (x) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- (y) the Concessionaire has mis-utilised the Grant provided by the Authority for other than the purpose of Construction of the CMDO;
- (z) the Concessionaire has failed to submit the utilization Certificate from the Statutory Auditor for the utilization of the Grant;
- (aa) any other event which has been specifically mentioned in this Concession Agreement as Concessionaire Default.

- 42.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of Clause 42.1.3.
- 42.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 42.1.2 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 Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

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

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

42.2 Termination for Authority Default

- 42.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the “**Authority Default**”) unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:
- (a) The Authority commits a default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
 - (b) the Authority has failed to make any payment (including Grant) to the Concessionaire within the period specified in this Agreement;

- (c) the Authority fails to provide the Right of Way required for construction of the Project on at least 90% (ninety per cent) of the total area of the Project Site required and necessary for the Project; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

42.3 Termination Payment

- 42.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (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 COD1 and/or COD2, save and except as provided in Clause 42.3.3.

- 42.3.2 Upon Termination on account of an Authority Default, the Authority 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.

Provided that the Termination Payment shall not be less than an amount equal to the product of 24 (twenty four) and the Realisable Fee due and payable for and in respect of the last month of the Concession Period.

- 42.3.3 Upon Termination on account of Concessionaire Default during the Construction Period, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first 40% (forty percent) of the Total Project Cost and in the event of expenditure exceeding such 40% (forty percent) and forming part of Debt Due, the provisions of Clause 42.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding such 40% (forty percent). For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety percent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty percent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five percent) of the Total Project Cost. The Parties further agree that for the purpose of this Clause 42.3.3, Total Project Cost shall mean the amount specified in sub-clause (b) of the definition of Total Project Cost in Clause 52.1. The Parties also agree that for determining the Termination Payment under this clause 42.3.3, the expenditure comprising the latest Project Milestone shall also be reckoned.
- 42.3.4 Termination Payment shall become due and payable to the Concessionaire within 30(thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 42.3.5 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be payable to the Concessionaire; provided that in the event any Project Assets, essential for efficient, economic and safe operations of the Project / Project Facilities, shall have been acquired and installed after the 20th (twentieth) anniversary of the Appointed Date, with prior written consent of the Authority, which consent shall not be unreasonably denied, a Termination Payment equal to 80% (eighty percent) of the Adjusted Depreciated Value of such Project Asset shall, notwithstanding the provisions of Clause 42.4.1, be made by the Authority to the Concessionaire.
- 42.3.6 Notwithstanding anything to the contrary in this Agreement, but subject to the

provisions of Clause 42.3.5, in the event any Project Assets, essential for the efficient, economic and safe operation of the Project / Project Facilities, shall have been acquired and installed after the 20th (twentieth) anniversary of the Appointed Date, with prior written consent of the Authority, 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.

- 42.3.7 The Concessionaire expressly agrees that Termination Payment under this Article 42 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.

42.4 Certain limitations on Termination Payment

- 42.4.1 Termination Payment, not being Additional Termination Payment, due and payable under this Agreement shall be computed with reference to the Debt Due and Adjusted Equity, as the case may be, in accordance with the provisions of this Agreement. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD1 and COD2 respectively, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD1 and COD2 and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from the Total Project Cost. The Parties also agree that for the purpose of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty five percent) of the Total Project Cost.
- 42.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 42.4.2 shall not apply in the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of such foreign currency loans in to Indian Currency. Provided further that all borrowings in foreign currency shall be restricted to the financing of Total Project Cost and any borrowings in excess thereof shall not qualify for computation of Termination Payment.
- 42.4.3 Additional Termination Payment due and payable in respect of Specified Assets, which are constructed, acquired or installed after the 5th (fifth) anniversary of the COD1 and COD2 but no later than within the last 10 years of date of expiry of the Concession Period, 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 Authority, within 15 (fifteen) days of Termination, for submitting within 30 (thirty) days of his appointment hereunder; and
- (c) 40% (forty per cent) of the sum of Total Project Cost and Equity Support, if any.

42.4.4 Additional Termination Payment due and payable in respect of Specified Assets not forming part of CMDO and OMDO 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 Authority, within 15 (fifteen) days of Termination, for submitting within 30 (thirty) days of his appointment hereunder; and
- (c) 40% (forty per cent) of the sum of Total Project Cost and Equity Support, if any.

42.5 Extension of Concession Period

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than 5 (five) years, but no later than 3 (three) years prior to the completion of the Concession Period of 30 (thirty) years, by a notice issued to the Authority in accordance with the provision of Clause 3.1.1 require an extension, the Termination Payment specified in Clause 42.3.5 shall not be due and payable to the Concessionaire. Upon expiry of the extended Concession Period hereunder, the Project / Project Facility including the Project Site shall vest in the Authority under and in accordance with the provisions of this Agreement, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of the transfer of the Project to the Authority hereunder.

42.6 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

- (a) take possession and control of the Project / Project Facilities and the Project Site forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Project Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 43.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Contracts as the Authority may in its discretion deem appropriate,

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

42.7 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 42.3.7, 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 - 43

DIVESTMENT OF RIGHTS AND INTERESTS

43.1 Divestment Requirements

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

43.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer 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 44 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 43.

43.3 Cooperation and assistance on transfer of Project

- 43.3.1 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 Project Site.
- 43.3.2 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 Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 43.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 43.1.1 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.

43.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in **Schedule-V** (the “**Vesting Certificate**”), which

will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

43.5 Divestment costs etc.

- 43.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Assets in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 43.5.2 In the event of any dispute relating to matters covered by and under this Article 43, the Dispute Resolution Procedure shall apply.

ARTICLE - 44

DEFECTS LIABILITY AFTER TERMINATION

44.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 30 (thirty) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in the Escrow Account under the provisions of Clause 44.2 or from the Performance Guarantee provided thereunder.

44.2 Retention in Escrow Account

- 44.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of clause 44.2.3, a sum equal to 5% (five per cent) of the total realised gross turnover for the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of clause 44.1.
- 44.2.2 Without prejudice to the provisions of clause 44.2.1, the Independent Engineer shall carry out an inspection of the Project Site / Project / Project Facilities at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Site / Project / Project Facilities is such that a sum larger than the amount stipulated in clause 44.2.1 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.
- 44.2.3 The Concessionaire may, for the performance of its obligations under this Article 44, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under clause 44.2.1 or 44.2.2, 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 Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 44. Upon furnishing of a Performance

Guarantee under this clause 44.2.3, the retention of funds in the Escrow Account in terms of clause 44.2.1 or 44.2.2, as the case may be, shall be dispensed with.

PART VI
OTHER PROVISIONS

ARTICLE - 45

ASSIGNMENT AND CHARGES

45.1 Restrictions on assignment and charges

45.1.1 Subject to Clauses 45.2 and 45.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

45.1.2 Subject to the provisions of Clause 45.2, 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 Contract to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

45.2 Permitted assignment and charges

The restraints set forth in Clause 45.1 shall not apply to:

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

45.3 Substitution Agreement

45.3.1 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 Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in **Schedule-W**.

45.3.2 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 Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

45.4 Assignment by the Authority

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

ARTICLE - 46

CHANGE IN LAW

46.1 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.2 crore (Rupees two crore) and 0.5% (zero point five per cent) of the Project Revenues in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 46.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

46.2 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. 2 crore (Rupees two crore) and 0.5% (zero point five per cent) of the Project Revenues in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice,

along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 46.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

46.3 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 46 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

46.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users either directly or indirectly by revision of the market driven User Fees appropriately, duly considering the uniform implications of the Change in Law to the Industry.

ARTICLE - 47

LIABILITY AND INDEMNITY

47.1 General indemnity

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

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

47.2 Indemnity by the Concessionaire

- 35.2.1 Without limiting the generality of Clause 47.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (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;

- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors;
- (d) any act or omission of the Concessionaire, its employees, agents, officers and/or directors, whether undertaken pursuant to this Agreement;
- (e) the defective performance or non-performance of its obligations hereunder or under any contract awarded pursuant to this Agreement; and/ or
- (f) any breach of any warranty, representation or covenant given in connection with this Agreement.

47.2.2 Without limiting the generality of the provisions of this Article 47, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

47.3 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 47 (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.

47.4 Defence of claims

- 47.4.1 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 47, 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.
- 47.4.2 If the Indemnifying Party has exercised its rights under Clause 47.3, 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).
- 47.4.3 If the Indemnifying Party exercises its rights under Clause 47.3, 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 47.4.3 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.

47.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 47, 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.

47.6 Survival on Termination

The provisions of this Article 47 shall survive Termination.

ARTICLE - 48

RIGHTS AND TITLE OVER THE PROJECT SITE

48.1 Licensee rights

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

48.2 Access rights of the Authority and others

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

48.2.2 The Concessionaire shall, allow free access to the Project Site at all times for the authorised persons of the Authority.

48.3 Property taxes

All property taxes on the Project Site shall be payable by the Concessionaire.

48.4 Restriction on sub-letting of Project Site

The Concessionaire shall not sub-license or sub-let the whole or any part of the Project Site, save and except as may be expressly set forth in this Agreement. Further, the Concessionaire shall not have any right to create any Encumbrance and/or Convey/transfer/assign any right/title/interest, in a any manner in the Project Site; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE - 49

DISPUTE RESOLUTION

49.1 Dispute resolution

49.1.1 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 49.2.

49.1.2 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.

49.2 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 Additional Chief Secretary, Infrastructure Development Department, Government of Karnataka 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 49.1.1 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 49.3.

49.3 Arbitration

49.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 49.2, shall be finally decided by reference to arbitration. Any dispute or difference or claim arising out of, or in connection with, or relating to the present contract or the breach, termination or invalidity thereof, shall be referred and settled under the Arbitration Centre – Karnataka (Domestic & International) Rules 2012 (the **“Rules”**), by one or more arbitrators appointed in accordance with its rules.

The venue of such arbitration shall be Bangalore, and the language of arbitration proceedings shall be English.

49.3.2 The Arbitration Centre – Karnataka (Domestic & International) shall make a reasoned award (the **“Award”**). Any Award made in any arbitration held pursuant to this Article 49 shall be final and binding on the Parties as from the date it is made, and the

Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

49.3.4 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.

49.4 Adjudication by a tribunal

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 49.3, be adjudicated upon by such Tribunal or other forum in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE - 50

DISCLOSURE

50.1 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, the Maintenance Requirements and the Safety 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 at the Project. The Concessionaire shall prominently display at the Project, public notices stating availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges of a “no profit no loss” basis.

50.2 Disclosure of Documents relating to safety

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

50.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 50.1 and 50.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 50.1 and 50.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

Article 50-A

REDRESSAL OF PUBLIC GRIEVANCES

50-A.1 Complaints Register

50-A.1.1 The Concessionaire shall maintain a public relations office at the Project Site where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “Complainant”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project Site notice board, so as to bring it to the attention of all Users.

50-A.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.

50-A.1.3 Without prejudice to the provisions of Clauses 50-A.1.1 and 50-A.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

50-A.2 Redressal of complaints

50-A.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.

50-A.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE - 51

MISCELLANEOUS

51.1 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 Bengaluru, Karnataka shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

51.2 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).

51.3 Depreciation

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

51.4 Delayed payments

- 51.4.1 The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. Unless otherwise specified in the Agreement, in the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 4% (four percent) above the Bank Rate, and recovery

thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

51.4.2 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.

51.5 Waiver

51.5.1 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.

51.5.2 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.

51.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Contract, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

51.7 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.

51.8 Survival

51.8.1 Termination shall:

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

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

51.9 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.

51.10 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.

51.11 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.

51.12 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.

51.13 Successors and assigns

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

51.14 Notices

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

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

Attention:

Designation:

Address:

Fax No:

Email:

(b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the addressed given below and be addressed to the person named below with a copy delivered to the Authority's Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier;

Attention:

Designation: Managing Director,

Address: 4th Floor, East Wing, Khanija Bhavan, #49, Race Course Road, Bengaluru
560001

Fax No:

Email:

and

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

51.15 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.

51.16 Counterparts

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

ARTICLE - 52

DEFINITIONS

52.1 Definitions

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

“Accounting Year” shall mean the financial year comprising a period of 12 consecutive months ending on March 31 of any year; provided however that the first Accounting Year shall mean the period commencing on the Appointed Date and ending on the immediately succeeding 31st March. In the last year of subsistence of this Agreement, it means the period from 1st April to the Transfer Date;

“Additional Termination Payment” means the amount payable upon Termination in respect of Specified Assets, if any, as limited by provisions of Clauses 42.4.3, 42.4.4 and 42.4.5, as the case may be.

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

- (a) on or before COD1 and / COD2, 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 Price Index occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD1 and/COD2 and until the 4th(fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD1 and/or COD2 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 COD1 and/or COD2 to the extent of variation in Price Index occurring between COD1 and/or COD2 and the Reference Date; and

- (c) after the 4th (fourth) anniversary of COD1 and/or COD2, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point one one per cent) thereof at the commencement of each month following the 4th(fourth) anniversary of COD1 and/or COD2 and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between COD1 and/or COD2 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 Price Index shall continue to be made;

“Affected Party” shall have the meaning set forth in Clause 39.1;

“Agreement” or **“Concession Agreement”** means this Agreement, including its Recitals, schedules and annexures hereto, as of the date hereof as may be amended or supplemented, from time to time, in accordance with the provisions hereto;

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

“Applicable Laws” means any statute, law promulgated or brought into force and effect by GoI or the State Government of Karnataka (GoK) including rules, regulations and notifications made thereunder, bye-law, ordinance made thereunder and judgments, decrees, injunctions, writs or orders of any court of record, clearance, directive, guideline, policy, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration having the force of law of any of the foregoing, promulgated or brought into force and effect by GoI / GoK having jurisdiction over the matter in question, whether in effect as of the date of this Agreement or thereafter during the subsistence of this Agreement;

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

“Appointed Date” means the date on which all the Conditions Precedents of the Concessionaire as mentioned in Article 4.1.3 are either satisfied or waived, as the case may be, in accordance with the provisions of this Agreement. ;

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

“Associate” or **“Affiliate”** means, in relation to either Party {the Bidder/ Consortium Member}, a person who controls, is controlled by, or is under the common control with such Party {Bidder/ Consortium}. (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 by operation of law or contract or otherwise); **“Authority Default”** shall have the meaning as set forth in Clause 42.2.1;

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

“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;

“Architectural Design” shall have the meaning set forth in Clause 12.1.2;

“Average Daily Fee” means the amount arrived at by dividing the total share of the Realised Gross Turnover of the immediately preceding Accounting Year by 365 (three hundred and sixty five), and increasing the quotient thereof by 5% (five per cent); provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD1 and/or COD2 shall be a simple average of the Fee collected every day during the period between COD1 and/or COD2 and the last day of the month preceding the date on which the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of users has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

“Authority” shall have the meaning ascribed thereto in the array of Parties, set forth in the Recitals above;

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

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

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

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

“Bid Security” means the security provided by the { Concessionaire/Consortium} to the Authority along with the Bid in a sum of Rs. 9,35,00,000 (Rupees Nine Crore and Thirty Five lakhs only, in accordance with the Request for Proposals, and which has been substituted by the Performance Security;

“Change in Law” means occurrence of any of the following events after the execution of this Agreement:

- a) enactment of any new Applicable Indian Law;
- b) the repeal in whole or in part (unless re-enacted with the same effect) or modification of any existing Applicable Indian Law;
- c) the commencement of any Indian Law which has not been entered into effect until the Bid Date;
- d) the change in interpretation or application of any Applicable Indian Law by a judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the Bid Date;
- e) any change in the rates of any taxes that have a direct effect on the Project;

For the avoidance of doubt, a change in the rate of any Tax or the imposition of a new Tax shall not constitute a Change in Law and the Parties shall be liable to bear the impact and incidence thereof at their cost and risk.

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/Consortium Members}, together with {its/their} Associates or Affiliate in the total Equity to decline below (i) 51% (fifty one per cent) thereof, in case it is a single entity, during Construction Period and until 2nd (second) anniversary of COD1 and/or COD2, whichever is later and (ii) 26% (twenty six per cent) thereof, and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession during Construction Period and until 2nd (second) anniversary of COD1 and/or COD2, whichever is later, in case it is a Consortium. Provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to COD1 and/or COD2, 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 6.3;

“Completion Certificate” shall have the meaning set forth in Clause 14.1;

“Concession” shall have the meaning set forth in Clause 3.1;

“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 33.1;

“Concession Period” shall have the meaning set forth in Clause 3.1;

“Concessionaire Default” shall have the meaning set forth in Clause 42.1.1;

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

{“Consortium” shall have the meaning set forth in Recital; }

{“Consortium Member” means a company specified in Recital as a member of the Consortium;}

“Construction Period” means the period beginning from the Appointed Date and ending on COD1 and/or COD2;

“Commercial Operations” shall have the meaning set forth in sub-Clause 15.1.1;

“Commercial Operation Date” shall have the meaning set forth in Clause 15.1.1;

“Concessionaire Default” shall have the meaning as set forth in Clause 42.1.1

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

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

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

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

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

"DFBOT" or **"Design, Finance, Build, Operate and Transfer"** shall have the meaning set forth in Recital;

"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 Lenders under the Financing Agreements for financing the capital cost of the Project (the **"Principal"**) but excluding any part of the principal that had fallen due for repayment 2 (two) year 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 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 1 (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 Authority Default; and
- c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

provided further that the Debt Due, on or after COD1 and COD2, shall in no case exceed 85% (eighty five percent) of the Total Project Cost.

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

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

“Dispute” shall have the meaning as set forth in Clause 49.1.1

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as forth in Article 49.

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as set forth in Article 43.1;

“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;

“Depreciated Historic Cost” or **“DHC”** means the depreciated historic cost as computed in accordance with;

“Designs and Drawings” means the conceptual and detailed designs, detailed drawings and engineering, project master plans, backup technical information required for the Project Facilities and all calculations, samples, patterns, models, specifications and other technical information relating to the Project, submitted by the Concessionaire from time to time for approval in accordance with the provisions of this Agreement and shall include 'as built' drawings of the Project;

“EPC Contract” means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for inter alia, engineering and construction of the Project Facilities in accordance with this Agreement.

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

“Encumbrances” means 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 without limitation any designation of loss payees or beneficiaries or any similar arrangement under any

insurance policy pertaining to the Project, physical encumbrances and encroachments on the Project Site;

"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 shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component, but does not include Equity Support;

"Equity Support" shall have the meaning as set forth in Clause 31.2.1;

"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 as set forth in clause 36.1.2;

"Escrow Bank" shall have the meaning as set forth in Clause 36.1.1;

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

"Execution Date" shall mean the date on which the Parties hereto have executed this Agreement;

"Financial Close" means the date on which the Financing Agreements providing for funding by the Lenders have become effective and conditions if any for draw down of fund have been met by the Concessionaire such that the Concessionaire has immediate access to such sanctioned funding under the Financing Agreements and as such the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"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 Project Completion 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 39.1;

"GOI/ GoI" means the Government of India;

"GOK" means the Government of Karnataka;

"Golden Share" shall have the meaning as set forth in Clause 5.4.1;

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

"Grant" shall have the meaning as set forth in Clause 31.1.1;

"Indemnified Party" means the Party obligated to indemnify the other Party pursuant to Article 47

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 47;

"Independent Engineer" shall have the meaning as set forth in Clause 28.1;

"Indirect Political Event" shall have the meaning as set forth in Clause 39.3

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 37, and includes all

insurances required to be taken out by the Concessionaire under Clause 37.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

“Key Performance Indicators” shall have the meaning as set forth in Clause 27.1;

“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 *parripassu* charge on the assets, rights, title and interests of the Concessionaire;

“Letter of Award” or “LOA” means the letter No. ____ dated _____, 2018 issued by the Authority to the Bidder / Concessionaire and referred to in the Recital;

“Lead Member” shall have the meaning as set forth in Recital.

“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 as set forth in clause 17.3;

“Maintenance Programme” shall have the meaning as set forth to it in clause 17.4.1;

“Core Minimum Development Obligations” or “CMDO” means the Convention Centre and Exhibition Halls including all facilities, services and all assets comprised therein, which form the mandatory & Minimum Development Obligations of the Concessionaire under this Agreement and are detailed as such in and which the Concessionaire shall design, finance, build, provide, develop and procure within the Project Site in accordance with the terms of this Agreement, Applicable Laws, Applicable Permits and consistent with Good Industry Practice.

“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;

“Other Minimum Development Obligations” or “OMDO” means the Hotels, Multi-level Car Parking, commercial development, etc including all facilities, services and all assets comprised therein, which form the mandatory & Minimum Development Obligations of the Concessionaire under this Agreement and are detailed as such in and which the Concessionaire shall design, finance, build, provide, develop and procure within the Project Site in accordance with the terms of this Agreement, Applicable Laws, Applicable Permits and consistent with Good Industry Practice.

“Optional Permissible Facilities” means any other facility subject to fulfillment of CMDO and OMDO, and availability of land on the Project Site, as permitted in accordance with the Applicable Laws and the terms of the Agreement and not covered under Prohibited Activities, or any other facility that can be classified as necessary for supplementing the promotion of the Project which the Concessionaire may, in its discretion and subject to Applicable Laws and Good Industry Practices, and subject to fulfillment of the CMDO and OMDO, provide or procure as specified in **Schedule-C**;

“O&M” means the operation and maintenance of the Project Facilities as detailed under Article 17 and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Fee in accordance with the provisions of this Agreement;

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

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

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

“Operation Period” means the period commencing from the date of COD1 and/or COD2 and ending on the Transfer Date;

“Panel of Chartered Accountants” shall have the meaning as set forth in Clause 38.2.1;

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

“Performance Security” shall mean the irrevocable and unconditional Bank Guarantee provided by the Concessionaire from a Nationalized/Scheduled bank having a branch in Bangalore, substantially in the format set forth in the RFP document as guarantee for the performance of its obligations in respect of the Project and as more particularly described under Article 9 of this Agreement;

“Political Event” shall have the meaning as set forth in Clause 39.4;

“Person” unless specifically provided otherwise, shall mean any individual, corporation, partnership, joint venture, trust or Government Agency or any other legal entity as the context may admit or require;

“Selected Bidder” shall have the meaning set forth in the array of Parties in the recital;

“Prohibited Activities” means the activities not permitted under the law for the time being in force.

“Project” means the construction, operation and maintenance of the envisaged facilities on the Project Site, subject to the provisions of this Agreement, and includes (i) design, finance, development, construction, implementation, commissioning, marketing, management, operating, maintenance and commercial use of the Project Facilities including CMDO, OMDO and other Optional Permissible Facilities at the Project Site during the Term of the Agreement, (ii) execution of the Works and all activities incidental thereto, such as engineering, testing, commissioning and insurance etc., by the Concessionaire during the Concession Period; (iii) demanding, charging, collecting, retaining, appropriating and revision of tariff with respect to the Project by the Concessionaire at market driven rates in accordance with the provisions hereof and (iv) the transfer of the Project by the Concessionaire to the Authority or its authorized / nominated representative upon the expiry of the term of this concession agreement or an early termination, if any.

“Project Assets” means all tangible and intangible assets relating to and forming part of the Project Site including, but not limited to, (a) rights over the Project Site in the form of Right of Way or otherwise, (b) tangible assets such as the foundation, embankments, buildings, structures, super structures, constructions, additions, alterations or improvements etc. thereof, landscape structures, pavement and walkways, drainage facilities, sign boards, electrical, mechanical, civil, sanitation and other works, other communication equipment, equipment, technology at the Project Site / relating to the Project; (c) financial assets of the Project such as receivables, cash and investments, security deposits for utilities, Project Revenues etc.; (d) the rights of the Concessionaire under the Project Contracts, (e) the Applicable Permits and authorizations relating to or in respect of the Project and (f) insurance proceeds;

"Project Contracts" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract(s), licensing agreements, all agreements relating to Project Facilities 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;

"Project Facilities" means the physical works engineered, procured and constructed as a result of the Works being performed and shall include CMDO, OMDO and Optional Permissible Facilities and any other Optional Permissible Facilities developed on the Project Site as set out in **Schedule-B** and **Schedule-C**.

"Project Master Plan" or "Master Plan" means the master plan of the Project as attached in **Schedule-A** of the Agreement.

"Project Site" shall have the meaning set forth in clause 2.1

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

"Project Revenue" shall refer to and include any & all pre-tax gross revenues from all sources or amounts of money by whatever name called and the total receipts of business of the Concessionaire for any period, that arise, accrue to and/or are received (or which would have been received) by the Concessionaire from the operation of Project, CMDO, OMDO, other Optional Permissible Facilities and any other Development / revenue accruing facility within the Project Site including without limitation the monies charged, collected demanded, levied, received by the Concessionaire pursuant or incidental to – **(i)** the license/sub-license of built up space on the Project Site; **(ii)** exploitation in any manner whatsoever of the Project Facilities by any Person, whether at the instance of the Concessionaire or the Sub-Licensee, including but not limited to capital receipts, upfront sub-licence payments, deposits, advances, registration payments, installments received from Sub-Licensees, sub-licence charges, fees, tariff, parking charges, maintenance charges etc; **(iii)** revenues from events, conventions, guests, visitors, persons utilizing the facilities of Convention & Exhibition centre, Parking Space; **(iv)** revenues from guests, visitors, persons utilizing the facilities, occupying space in the Hotel or from rendering of services to the Hotel or its guests or which constitute tariff; **(v)** revenues from Commercial/Office space in the form of lease rentals/lease rental deposits/revenue share of the subleased space; **(vi)** revenues from User Fee at the Project / Project facilities; and **(vii)** Any interest, dividend etc. accruing to the Concessionaire from the Concession granted hereunder, or any insurance proceeds received by it against indemnification for loss of revenue out of this Concession etc; **(viii)** Any direct or indirect tax benefit, incentive, subsidy, grant accruing to the Concessionaire on account of the Concession which has an impact on the Project Revenue; **(ix)** all other net amounts which fall (or would fall) to be credited to the profit and loss account of the Concessionaire for the Accounting Year in which the relevant period falls.

However, for the purpose of clarity the followings will be excluded from the Project Revenues:

(a) payments made by the Concessionaire, if any, for the activities undertaken by Government Instrumentalities or payments received by the Concessionaire for provision of electricity, water, sewerage, or analogous utilities to the extent of amounts paid for such utilities to third party service providers; (b) insurance proceeds except insurance indemnification for loss of revenue; (c) any amount that accrues to the Concessionaire from sale of any capital assets or items; (d) payments and/or monies collected by the Concessionaire for and on behalf of any Government Instrumentalities under Applicable Law and/or on behalf of Authority; (e) any bad debts written off provided these pertain to past revenues on which requisite payments has been made to Authority.

“Request for Proposals” or “RFP” shall have the meaning set forth in Recital,

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

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

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

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

“Site” or “Project Site” shall have the meaning set forth in Clause 2.1

“Service Quality Requirements” shall have the meaning as set forth in Annex-I of Schedule-L.

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

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

(a) such of the Project Assets which are constructed, acquired or installed after the

5th (fifth) anniversary of COD1 and/or COD2, but no later than the 30th (thirtieth) anniversary of the Appointed Date.

- (b) All buildings and immovable fixtures or structures developed on Project Site;
and

“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;

“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;

“Substitution Agreement” shall have the meaning set forth in Clause 45.3;

“Suspension” shall have the meaning set forth in Clause 41.1;

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

“Termination” means determination of this Agreement due to expiry of the Concession Period (Efflux of Time) or early determination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement;

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

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

“Termination Payment” means the amount payable by either Party, as the case may be, under this Agreement upon Termination;

“Tests” means the tests to be carried out pursuant to this Agreement and include the test to determine the completion of the construction works and certification thereof by the independent consultant prior to Commercial Operations;

“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, as the case may be;

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

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion; and
- (c) a sum of [Rs. 935 crore (Rupees Nine Hundred Thirty Five crore), less Grant Support];

provided that in the event Price Index Increases, on an average, by more than 3% (three percent) per annum for the period between the date hereof and COD1 and COD2, 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 Price Index, in excess of such 3% (three percent), is reflected in the Total Project Cost.

Provided further that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Price Index 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 also that the Total Project Cost shall not exceed the actual capital cost of the constructions works upon completion of the Project;

“User” means a person including the persons paying a User Fee, visitor or any other person, who uses or intends to use the Project Facilities or any part thereof, including any or all services, on payment of Fees or in accordance with the provisions of this Agreement and Applicable Laws.

“User Fee” / “Fee” shall have the scope and meaning as ascribed to it in Clause 34.

“Vesting Certificate” shall have the meaning set forth in Clause 43.4;

“Works” mean the works under and in accordance with the provisions of this Agreement relating to design, development of Project Site, construction, testing and commissioning of the Project (the **“Construction Works”**), and the operation and maintenance of the Project Facilities, rectifying and remedying of defects therein (the **“O&M Works”**), collectively or singularly as the context may admit or require, including the technology, services and things to be designed, engineered, constructed, installed, equipped, supplied, executed, manufactured, completed, tested, commissioned, rectified, replaced, made good, carried out and undertaken in respect of the Project/Project Facilities and any other permanent, temporary or urgent works required under this Agreement;

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

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement by their duly authorised representative on the date first above written

Signed, sealed and delivered by: The Authorised Signatory For and on behalf of _____ (Authority) Name Designation	Signed, sealed and delivered by: The Authorised Signatory For and on behalf of the _____ XX Ltd (The Concessionaire) Name Designation Company seal	Signed, sealed and delivered by: The Authorised Signatory For and on behalf of the _____ (Selected Bidder) Name Designation Company seal
<u>Witness:</u> 1.	<u>Witness:</u> 1.	<u>Witness:</u> 1.

SCHEDULES

Schedule – A

PROJECT SITE

1. The Project Site

- 1.1 Project Site shall include the land, as described in Annex-I of this **Schedule-A**.
- 1.2 An inventory of the Project Site including the land, trees and any other movable property on, or attached to, the Project Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

2. Conceptual / Preliminary Master Plan for the Project Site

- 2.1 The Conceptual / Preliminary Master Plan for the Project Site is at Annex-II of this Schedule-A.

3. Other Optional Permissible Facilities

The other Permissible Facilities not included in the Conceptual / Preliminary Master Plan are described at Annex-III of this Schedule-A.

Annex-I
(Schedule-A)

Details of the Project Site is given in Volume III: Project Information Memorandum of the RFP document *(Actual Survey Drawing with delineation of Project Site in Master Plan, Description with reference to plot no, etc to form part of the Concession Agreement)*

Annex-II
(Schedule-A)
(see Clause 12.2.1)

Conceptual / Preliminary Master Plan for the Project Site

Conceptual/Preliminary Masterplan for Bengaluru International Convention Centre

1 Background

Bangalore is known both as the Silicon Valley of India because of its role as the nation's leading IT exporter as well as the Garden City of India due to its large number of parks, open spaces and tree lined avenues. The Government of Karnataka envisions Bangalore to be a major MICE (Meetings, Incentives, Conventions & Exhibitions) destination and envisions the Bangalore International Convention Centre as an architectural landmark to establish the same. The project aims to be a sustainable, green development with an appropriately high level of green building certification. The design concept for the centre seeks to build upon the identity of Bangalore as the Garden City of India, and further emphasizes the Government of Karnataka's vision of taking the lead in promoting the idea of sustainable development.

The project has been conceptualized based on the vision of GoK for the project and also based on the following:

- Showcasing Karnataka to the world
- Designing flexible, multi-use spaces
- Creating an architectural landmark
- An ecologically sustainable development
- Promoting Bangalore as an international MICE destination

2 Brief of Theme & Concept of the BICC

The theme and concept for the project has been evolved based on the positioning of "Bangalore as the Garden City" and the developments envisaged are projected to highlight this positioning of Bangalore. The concept of the BICC is designed around the garden city theme with the intent of creating a convention-exhibition experience within a garden. The buildings blend seamlessly into the surroundings to make the greens and gardens as the focus. This is achieved by utilising design elements such as smaller gardens (which double up as spaces that can be hired out to generate additional revenue), open pre-function spaces within the garden itself. The buildings to also blend with the surrounding garden environment by usage of suitable building facades.

Considering that the area in the immediate vicinity of the land earmarked presently does not have any development and the BICC is designed to establish as a destination evolving its lively characteristics from within itself. The theme has thus been conceptualized so as to have create elements creating the vibrancy within the development .The main components of the development -Convention Hall, Exhibition hall, Business Village, Hotels, Entertainment areas and green spaces are hence designed to be developed amongst the gardens are thus not focused on the region in the immediate vicinity outside but taking the vivacity from within the development. The BICC is envisaged to be the catalyst for the future developments in the region.

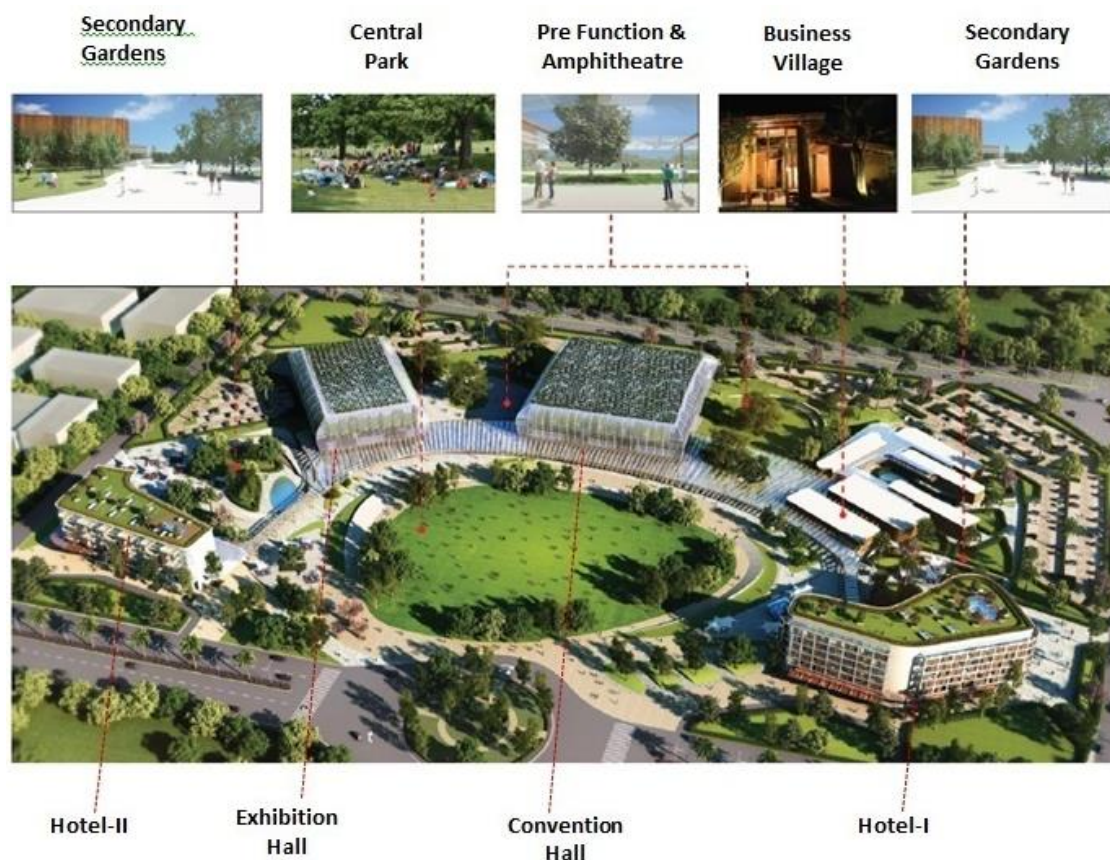
As indicated above, the design has a central garden for big events and festivals, smaller secondary gardens for smaller events and the pre-function spaces and amphitheatre for more intimate occasions. The central garden becomes the space through which the various

elements of the plan and the components of the development is linked. The concept also takes into account the multiple access to the development which includes the main access road which is towards the northern part of the site and a secondary access road towards the southern edge nearer the airport.

The design offers a large number of green plazas and courts spread out throughout the development. These green nodes are also linked to the central green boulevard thus augmenting the green approach of the development.

The zoning of the site has been done so that the Convention & exhibition Halls take a centre stage aligning to the central garden. The Hotels are located at the northern end of the site such that they have independent frontage, separate entries and also individual garden spaces. The Convention Hall, Exhibition hall & Business Village overlooks the Central Green Plaza creating a vista.

The green plaza ties all the buildings of the complex together and all the components have been spread out in a **campus style layout which enhances the garden city theme**. This concept also explores a sustainable approach to the design with the roof having customized solar panels and rain-water harvesting provisions on site. The various components and the arrangement in the preliminary conceptual masterplan is as below.



The brief of various components is as below.

2.1 Convention Centre

This state-of-the-art facility has been designed to focus not only on large conventions but will also cater to the domestic and international corporate meeting market. The design of the facilities has been proposed so as to provide flexibility and divisibility of function space to enhance its potential to cater to a multitude of events and hence generate additional revenue. The main multi-purpose conference/plenary hall is proposed to be without any intermediate columns and with a minimum seating capacity of 6000 seats with provision of seats in retractable mode also so as to accommodate a variety of events. The concept design also takes into account ample pre-function areas which has to be incorporated as an integral component of the development concept design. The convention centre is also to be supported by value added services and ancillary facilities which includes a food court, business centre, a media centre, ATMs, florist, souvenir outlets, etc. The convention hall is to be designed to be equipped with lighting and acoustic facilities to enable the facility to be utilized as an Opera House.

A separate VVIP / VIP entrance, entrance foyer / lobby and lounge needs to be considered while designing the Convention Centre.

2.2 Exhibition Centre

An air conditioned exhibition hall is also proposed to cater to the exhibition market. It can also serve as additional space during major conventions. The exhibition hall has to be designed to be multi-use and to allow maximum flexibility. The area envisaged for the facility is minimum 6500 sq.m. The primary purpose of the exhibition hall is to operate as an exposition hall, however, to optimize its potential use the hall can easily be utilized for a variety of other functions including:

- Trade exposition
- Conferences and speaking lectures
- Banquet or weddings
- Concerts and entertainment
- Sports: tennis/basketball/skateboarding/badminton/etc

2.3 Business Village

A business village with small meeting rooms of various capacities have to be designed as an integral part of the development. The capacities of the meeting rooms are to be such as to accommodate meetings of 50 persons to 1000 persons.

2.4 Mid Scale Hotel/ 5 star Hotel

Convention / Exhibition guests would not like to travel long distances from the venue to their hotels. The ideal location is a host hotel within the same Project Site. Considering the same, a midscale hotel (minimum 5 star category) has been envisaged as a full service Hotel with minimum 250 rooms, with a superior level of finish and modern guest-room amenities. This hotel is proposed to be the 'host' hotel for the convention and exhibition facility, with ample F&B areas as it is expected that this will be used by event guests. The Direct internal circulation for Hotel Guests to the Convention Centre / Exhibition halls has been envisaged through pathways, cycling tracks and e-buggies.

2.5 Central Park

The central courtyard has to be designed to be a green space which is vibrant and where the visitors could enjoy an unique experience within the spectacular surroundings. This

would act as the focal arrival point within the development. The component are to be designed so as to provide seamless relationship between the elements. The main central garden is envisaged to be the heart of the green concept and is a space dedicated spillover during large events/ gatherings with the main pedestrian circulation spine encircling it.

2.6 Secondary Gardens

Apart from the central garden, these secondary gardens are to be provided in at both the eastern and western ends which are divided into smaller gardens which can be clubbed together and rented as spaces to hold events such as weddings and functions. These have smaller more intimately landscaped spaces than the central garden. As these are in close proximity to the hotels there is the possibility of them being rented by the hotels to hold big weddings or similar functions.

2.7 Circulation

Clear, organized circulation is essential for a conflict free movement of pedestrians, vehicles, servicing facilities. A network of pathways for pedestrians, VIP vehicles, other vehicles, service vehicles and provision for differently abled have been incorporated in the design for attaining the objective of reducing conflict points.

2.8 Parking and loading facilities

The design has to be done so as to ensure that parking and loading areas are adequately concealed from main entry, open spaces and ensure the use of rear lanes wherever possible. The areas have to be placed so as to provide minimum disturbances to the vehicular traffic to BICC, circulation regions, pedestrian environment or experience.

2.9 Other facilities/components-Retail & Entertainment Centre/commercial development

In addition to the above major components additional components viz: Retail and entertainment centre and other commercial facilities may also be included so as to create a lively all year round activity in the development

3 Guidelines for Design of Bengaluru International Convention Centre

In addition to the objectives of GoK for the project and the approved “Green House” Concept under the “Garden City” Theme, the following key parameters also to be considered by the concessionaire while preparing the concept master plan for the development

- To provide a safe, friendly and exciting venue for the enhancement of business activities and the achievement of a total learning and entertainment experience for users.
- To maximize revenue potential by providing flexibility for a wide range of modes for conference and exhibition activities and incorporating the correct mix of ancillary facilities designed to generate additional income and create new market opportunities.
- To minimize capital and operating costs by designing for low, flexible staffing levels with a simple low maintenance structure and minimum energy usage.
- To enable patrons and delegates to clearly see and hear exhibitions, conferences and performances in safety and comfort by providing good sight lines, comfortable seating, direct access and egress, air conditioning etc.

- To provide a venue which is of international standards with adequate facilities in order to encourage private organizers and association committees to want to use the facility on a regular basis.

3.1 Guidelines for Theme & Concept

As referred above, the theme and concept has been based on the positioning of Bengaluru as a Garden City and to maximize the utilization of the salubrious climate of Bengaluru. The proposed components have been envisaged to accentuate the same. The “Garden City” theme considers the elements of the Garden city and the green spaces and envisions the creation of buildings within gardens and open spaces. Whereas, the “Green House” concept within the theme emphasizes the creation of a garden within the components. The effect is created by facades which mimics the greenery in the surroundings. The facade is also provided with glass/transparent shell which enable the feel of interaction of the internal green spaces with adjacent central garden and secondary gardens and other urban open space.

The Concessionaire has the freedom to adopt the preliminary conceptual master plan as evolved and may augment the same in order to provide a better experience or design a different mater plan based on the concessionaire’s proposal/scheme for establishing the project. However, it may be noted that the Concessionaire at all times shall adhere to the “Garden City” theme and “Green House” concept as approved by the GoK. The general guiding principles of the Theme & Concept is as below:

- The “Garden City” theme to consider elements of green spaces and the components to be designed within or around the garden spaces and blend into the surroundings to make the garden and its users the focus.
- The “Green House” concept to create the feel of gardens within the components which seamlessly blends into the external surrounding.
- The built form together with the open space should enhance the feel of greenery
- The material/finish of the buildings shall mimic their surrounding garden environment by using environment friendly elements and vertical greens on the building facades to look like a part of the overall garden
- The theme may be based on a spread out campus style development or a concentrated cohesive development.
- The buildings /components also must demonstrate an environmentally sustainable design and environmentally conscious facilities
- The buildings may be of blockwork/ stone construction with extensive plantation along the building periphery.
- The development to be flexible and the spaces need to accommodate various activities. for major international congresses, conventions, conferences, trade exhibitions and entertainment events. In addition, the centre also need to be equipped to host local and regional trade, consumer exhibitions, meetings, conferences, banquets and entertainment and cultural performances.

- The development to aspire to create an authentic and memorable customer experience for those using the facility

The broad requirement of the project components which may be considered as the minimum requirement of the development is as in table below (The minimum facilities for the project has also been detailed in Schedule C :

SlNo	Component	Capacity/Area*
1.	Convention Hall	Minimum 6000 capacity column free hall with associated facilities
2.	Exhibition Hall	Minimum of 6500 sqm column free hall with associated facilities
3.	Meeting Rooms	<ul style="list-style-type: none">• 5 meeting halls of 200 people each, which can be subdivided into 10 meeting rooms of 100 each or 20 meeting rooms of 50 each (total capacity = 1000)• 1 meeting hall of 1000 (divisible into 2 halls of 500 each) (total capacity = 1000)• CM's office and secretariat• VIP lounges, 1 VVIP lounge• Business Centre including upto 10 small conference rooms• Administrative offices
4.	Hotel	<ul style="list-style-type: none">• 250 Rooms of Minimum Five star Category

*The facilities mentioned above are the minimum requirement that needs to be constructed by the Concessionaire.

The Convention and exhibition facilities shall be designed so as to make it modular and expandable as per requirement of future demand.

Annex-III
(Schedule-A)
(see Clause 3.1.3)

Other Optional Permissible Facilities

The concessionaire shall develop the following facilities or any other related facilities (subject to approval of Authority) for improving the viability of the project. However, the Concessionaire at all times should ensure that there shall be no interference to the activities of the CMDO & OMDO due to the development of optional permissible facilities.

The other Option Permissible Facilities i.e. Retail & Entertainment Centre and Commercial Facilities shall however be subject to a maximum built up space of 5.00 Lakh Square Feet only.

1 Retail & Entertainment Centre

The Concessionaire may develop a Retail and Entertainment Centre providing retail/entertainment spaces for lifestyle shopping, food courts, multiplexes, etc. so as to create an ambience of year round activity in the development. The Planning and Development Guidelines of BIAAPA and other relevant regulations shall be followed by the Concessionaire for developing the above facilities. The Concessionaire shall ensure that separate parking area and other supporting amenities catering to the needs of the Retail and Entertainment Centre shall be provided.

2 Commercial Facilities

The Concessionaire may also develop any other commercial components subject to the approval by the Government. The Planning and Development Guidelines of BIAAPA and other relevant regulations shall be followed by the concessionaire for developing commercial facilities. Separate parking area and other supporting amenities catering to the needs of the commercial components shall be provided.

In addition to the above, the Concessionaire may develop a 3 Star or Higher Category Hotel as part of the other Optional Permissible Facilities

3. 3 Star or Higher Category Hotel

The Concessionaire may also develop a 3 Star or Higher Category Hotel as part of the other Optional Permissible Facilities, within the Project Site.

Schedule – B

(see Clause 2.1)

DEVELOPMENT OF THE PROJECT

1. Development of the Project

Development of the Project shall include Construction of the Project as described in this **Schedule-B** and in **Schedule-C**

Annex-I
(Schedule-B)

Description of Project / Project Facilities / CMDO / OMDO

1. Description of Project / Project Facilities / CMDO / OMDO

This section provides detailed description of Project / Project Facilities / CMDO / OMDO as has been envisaged in the preliminary concept design. The concessionaire may consider the same as guidelines for the detailed design for the development. **The minimum requirements to be adhered to and the facilities to be provided as part of CMDO/OMDO has been specified separately in Annexure-II to V of Schedule B and Schedule C respectively.**

A. Convention Facilities

(i) Main Convention Hall/Plenary Hall

The convention hall (capacity of minimum 6,000 seat) is the main facility at the development and is to be a large span column free flat floor structure. This element is envisaged as the focal point of the development and is designed as a multiuse space allowing maximum flexibility. The hall is to designed to accommodate conventions, congresses, meetings, trade shows, consumer shows, general exhibitions, banquets, concerts, cultural events and product launches. The plenary hall has to be designed such that it can function as a hall for minimum 6000 people and can also be subdivided into four halls of minimum 1500 people each.

The main convention hall has been conceptualised on 12000 sqm. of land with a ground cover of 8500sqm. and a total built up area of 10500 sqm. Primary access to the plenary hall is proposed through the open pre function space which has views of Central garden. This main entry to the convention hall acts as grand ceremonial route to the hall. Separate entries are provided for VIP / VVIP guest from VIP / VVIP entrance & lobby.

The main Convention Hall has to be designed to provide a column free space of 8000 sqm approximately. The clear height of the plenary hall is to around 10mts to the underside of the catwalks/acoustic baffles hung below the primary structural roof trusses. The quality of finishes of the plenary hall to be equivalent or more than that considered for a 5 star hotel.

Further, the lighting, sound and acoustics of the Convention Hall essentially need to be designed for performances like Opera , Musical Concerts, Theatre, etc.

The separation of the plenary halls from the exhibition halls and meeting rooms allows the area to be acoustically separated from outside interferences. The plenary hall adopts the 'box within a box' design principle to isolate the facility from surrounding noise sources. The main hall is flanked on either sides by garden areas which are all distinct spaces which are interlinked and thus can be used in combination to form a large event space as well as separately to host smaller functions.

(ii) Pre Function Area

The pre-function is envisaged to be spacious area with a combination of covered, semi-covered and open areas. During conventions this area forms a hub with a concierge/information counter, central registration and box office for ticket sales. The same has been designed to accommodate all the people who can be in the plenary hall at one time based on a ratio of 1 person per 0.75m² of area. During a convention this area serves as the point of delegate registration as well as the general area for orientation.

(iii) Storage

Appropriate storage has been provided at the same level as the hall to allow for storage of staging, temporary seating, lecterns, AV equipment, curtaining etc. when not in use.

(iv) Green room

A green room has been provided to serve as a lounge space for presenters. This space will be comfortable and relaxing with indirect lighting, soft colours and acoustically absorptive materials and furnishings. A private toilet is also provided which is accessible from the green room.

The upper level of the convention hall has a mezzanine which has facilities like the green room, storage, administrative offices and services such as MEP and AHU's.

(v) Backstage

The backstage areas have been designed to be suitable for use by speakers, performers and are at the same level as the stage floor. The backstage area is a self contained element and can be sealed off during an event. The backstage area has star dressing rooms, speaker prep rooms, staff canteen, storage and other ancillary facilities.

(vi) Other facilities

The Convention Hall to have international standard lighting, acoustics, Simultaneous Interpretation facilities, wireless connection facilities for high speed internet access, supporting AV facilities including but not limited to large LCD screens/video walls etc. To ensure maximum safety and security for the events, the centre to also be equipped with fully integrated, network-based system, latest quality surveillance systems, CCTVs etc so as to provide maximum coverage.

The indicative preliminary conceptual layout of the main plenary hall in various combinations of layout has been provided in figures 1& 2 below. Figure 3 represents the indicative arrangements when the convention hall is being utilized for indoor sports.

B. Business Village

(i) Meeting Rooms, Board Rooms

The Business Village consists of meeting rooms which will accommodate a wide spectrum of event types and group sizes. Rooms are grouped to provide flexible combinations with the use of operable partitions, which can be combined to create a single room or several smaller rooms. Room configurations are designed to have flexible features so as to be utilized for variety of modes such as theatre style, classroom style, banquet space either in conjunction with a convention or exhibition or hired by individual parties for meetings, seminars or functions. As per preliminary concept, the meeting rooms which are part of the business village is independent from the convention and exhibition halls but are easily accessible from both. The business village has been designed on a land parcel of 8600sqm

with a total ground cover of 6000 sqm and a built up area of 9500sqm approximately. The rooms are designed to be column free, air conditioned halls with humidity controls. The components of the business village are as follows:

- 5 meeting halls of 200 people each, which can be subdivided into 10 meeting rooms of 100 each or 20 meeting rooms of 50 each (total capacity = 1000)
- 1 meeting hall of 1000 (divisible into 2 halls of 500 each)
- CM's office and secretariat including lounge
- VIP lounges, 1 VVIP lounge
- Business centre including upto 10 small conference rooms,
- Administrative offices

(ii) Pre-function

The pre-function is the public side of the meeting rooms and all the rooms open out into a space of this kind. The pre-function in this design is an open area with semi-covered regions.

(iii) Operable Partition wall

The operable meeting room walls can either fold up into the ceiling or slide by top hung tracking into a recessed storage room.

(iv) Storage

The meeting rooms have been supported by local storage areas to allow for storage of staging, temporary seating, lecterns, AV equipment, curtaining etc. when not in use.

(v) Back of house

Each unit of meeting rooms is serviceable from a kitchen located in close proximity to the back of house corridor.

(vi) Staff and performer spaces

Offices for management and operations staff are located in the basement for this facility. The office area will include a registration area, offices, a briefing room, a break room and a lounge room. Locker rooms for male and female staff have also been provided.

(vii) Back Of House Corridors

Two major Back Of House Corridors connecting the 3 main buildings (Exhibition hall, Convention hall and business village) has been incorporated in the preliminary concept design. These corridors are envisaged to be utilized purely by the in-house staff to provide goods and services to various facilities within the venue without interference to the activities/events and to the public at the facility.

The preliminary layout of the business village is as in figures below:

Figure 4 Layout of Business Village



Figure 5 Section AA'

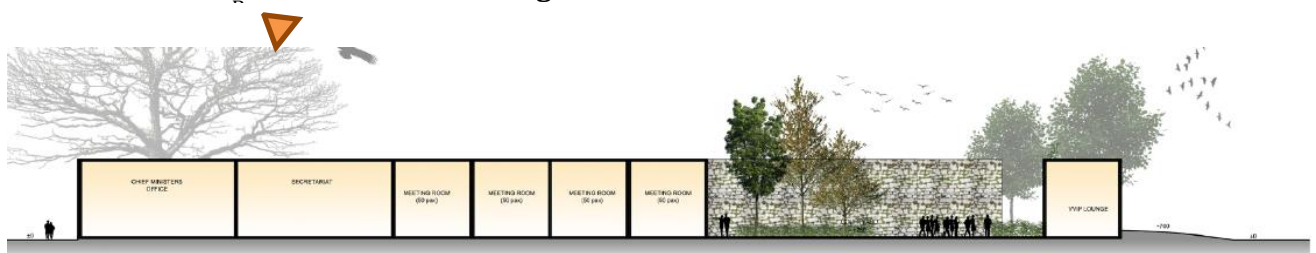


Figure 6 Section BB'



C.Exhibition Facilities

(i) Exhibition Halls

The exhibition hall of approximately 6500 sqm consisting of large span column free flat floor structure is envisaged in the development. The exhibition hall has been designed to be multi-use and has been developed to allow maximum flexibility so as to accommodate, trade shows, consumer shows, general exhibitions and cultural events and also for support activities during major conventions. The design also takes into account that with suitable planning it will also be possible to host sporting events such as indoor sports. The exhibition hall could also be used for large banquet functions and plenary sessions in a flat floor mode. The hall has been designed on 8330 sqm. of land with a ground cover of 6000 sqm and a built up area of 9500sqm. Approximately. The space provides the flexibility to handle simultaneous multiple events in different stages of the event, while minimizing conflicts between events. The exhibition hall is also proposed to be fully air-conditioned with humidity controls. Public access to the exhibition hall is via the open pre-function area. This space offers direct access from the public drop off, the Park and the Amphitheatre. It also provides a series of areas that can be configured to accommodate casual meeting places.

(ii) Pre-function

The pre-function space has been designed as a semi open space and has been designed with a space of 1.2 sqm per person. The pre-function has space for mobile registration counter and since it is semi-open has easy exits in the case of an emergency.

(iii) Ceiling

The roof structure is expected to accommodate lighting trusses, projection screens, banners, and other exhibition-related materials to be hung at pre-determined points. A utility services grid will be provided in the floor on 6m x 6m Centres.

(iv) Stage

The hall has been designed with a built-in fixed stage. The fixed stage has a theatrical front of house curtain. The stage freight access point is directly accessible from the prop store and the loading dock/ service bay.

(v) Storage

Appropriate storage has been provided at the same level as the hall to allow for storage of staging, temporary seating, lecterns AV equipment, curtaining etc. when not in use.

(vi) Service

The Exhibition Hall has its own service entrance providing truck access onto the exhibition floor from the loading / service dock. Clear access for oversized equipment and exhibit materials is provided via horizontal loading doors linking the exterior side yard with the exhibit hall. This door allows large equipment displays to be brought directly onto the exhibition floors.

The various combinations of arrangements possible in the facility is depicted in the following figures 7 to 9. The proposed elevation for the exhibition hall is as in figure 10.

Figure 7: Exhibition Hall arrangement in Exhibition Mode

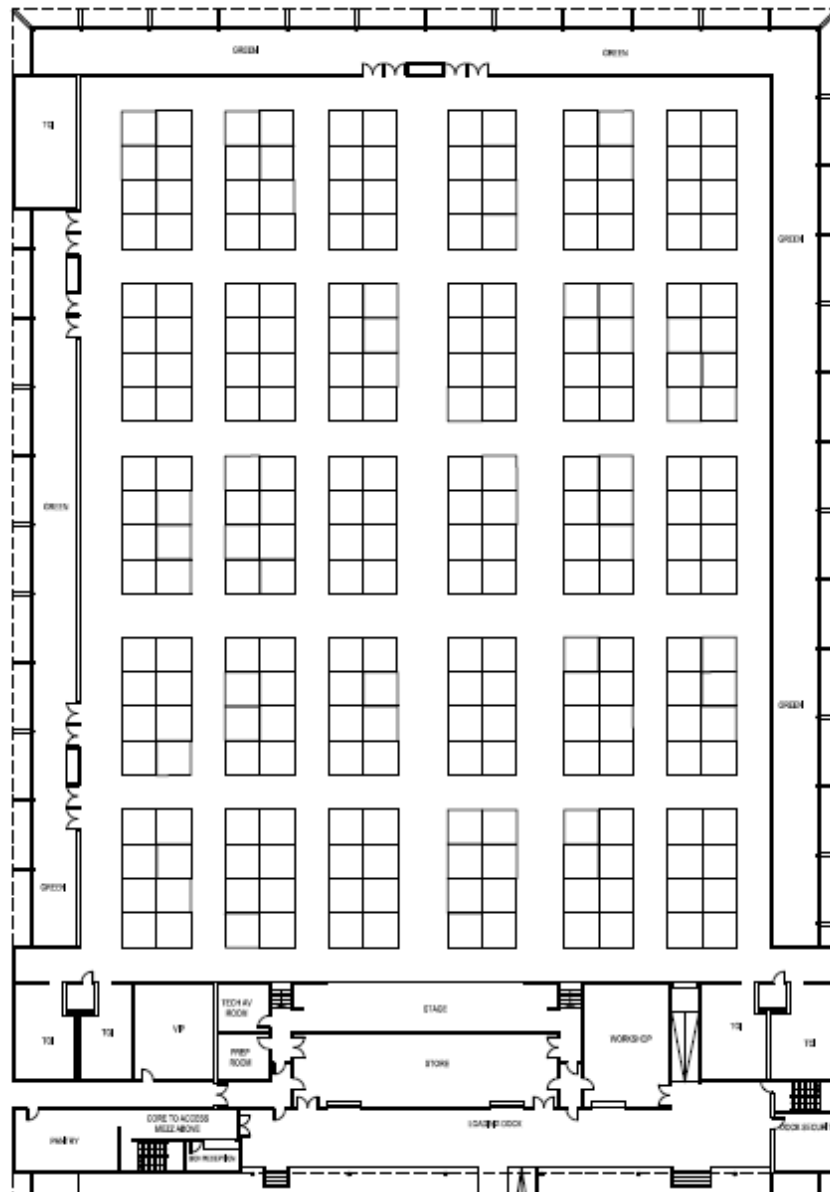


Figure 8: Exhibition Hall arrangement in Plenary Mode

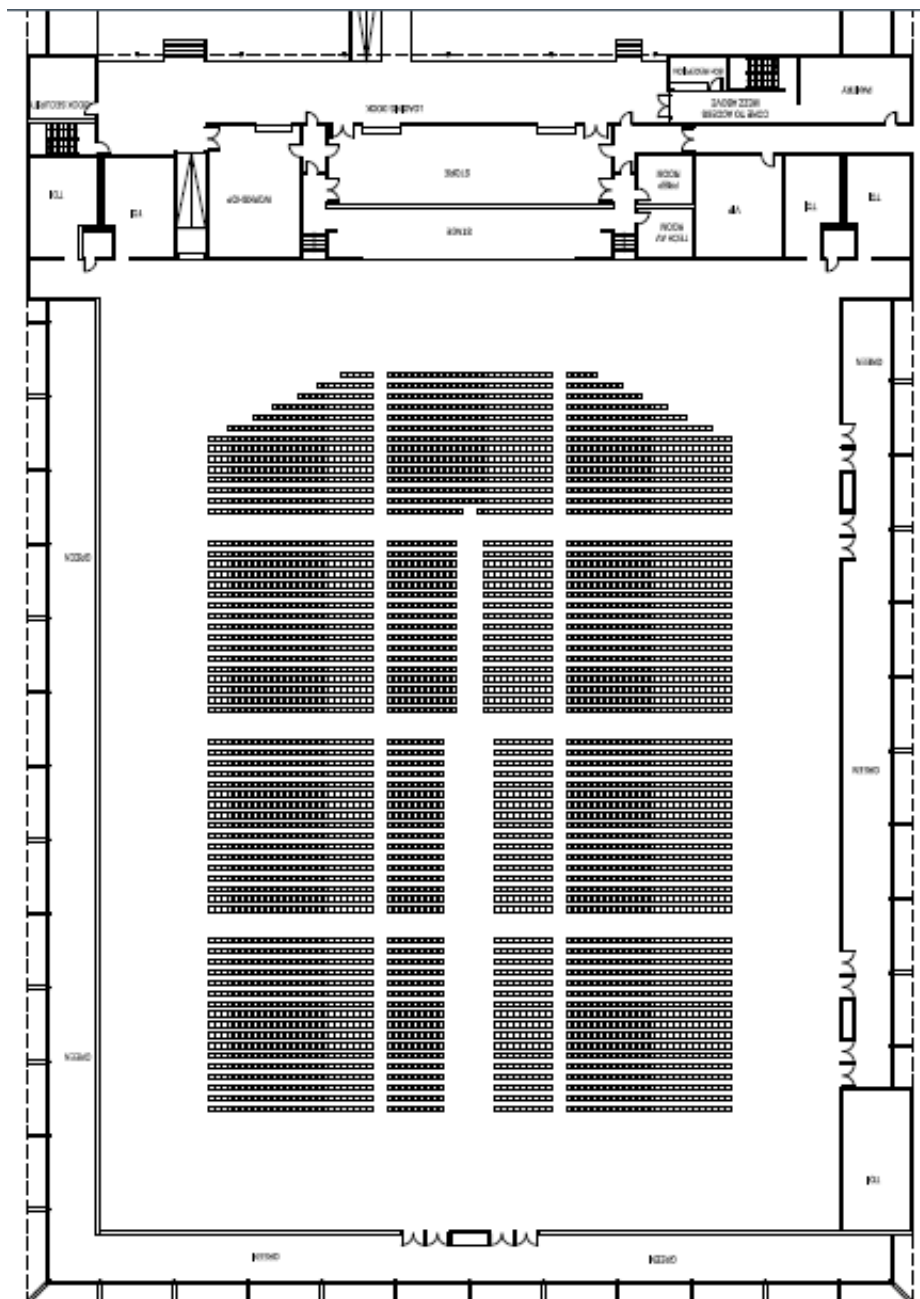


Figure 9: Exhibition Hall arrangement in Banquet Mode

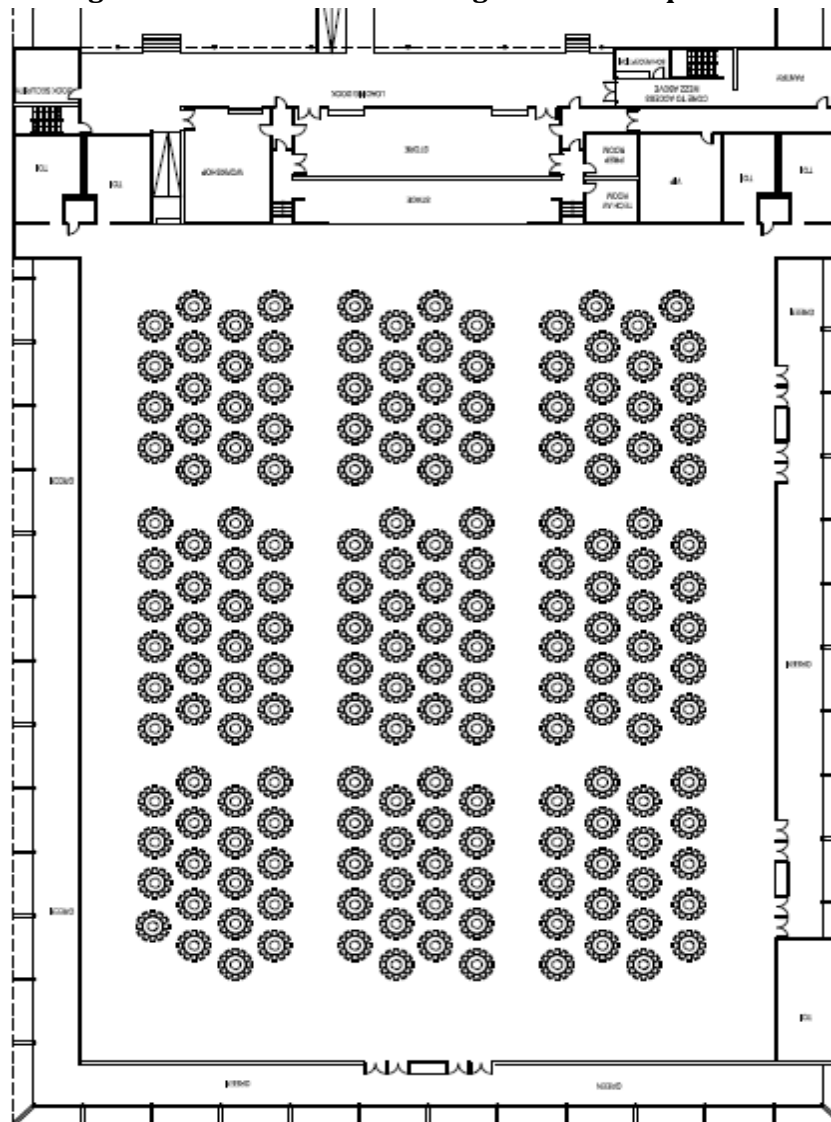


Figure 10: Front Elevation of Exhibition Hall



D. Central Park

The central courtyard has been designed to be a green space which is vibrant and where the visitors enjoy an unique experience within the spectacular surroundings. This acts as the focal arrival point within the development. The components is explored to provide seamless relationship between the elements. The main central garden is at the heart of the

green concept and is a space dedicated spillover during large events/ gatherings. The main pedestrian circulation spine encircles it. These are located around the central garden separated from it by the circulation spine. The central garden has been envisaged as the main entry point for the development and the all other spaces and buildings located around it. The central garden is circled by a pedestrian walkway that links it to the other parts of the complex.. As per preliminary conceptual master plan the area proposed for the central garden is approximately 15000 sqm. and by the extended central garden including the walkway is approximately 9000 sqm. The central garden also acts a connecting pedestrian walkway that links the central garden to the secondary gardens, intimate garden spaces adjacent to the buildings and forms links between the secondary gardens and central garden.

E.Secondary Gardens

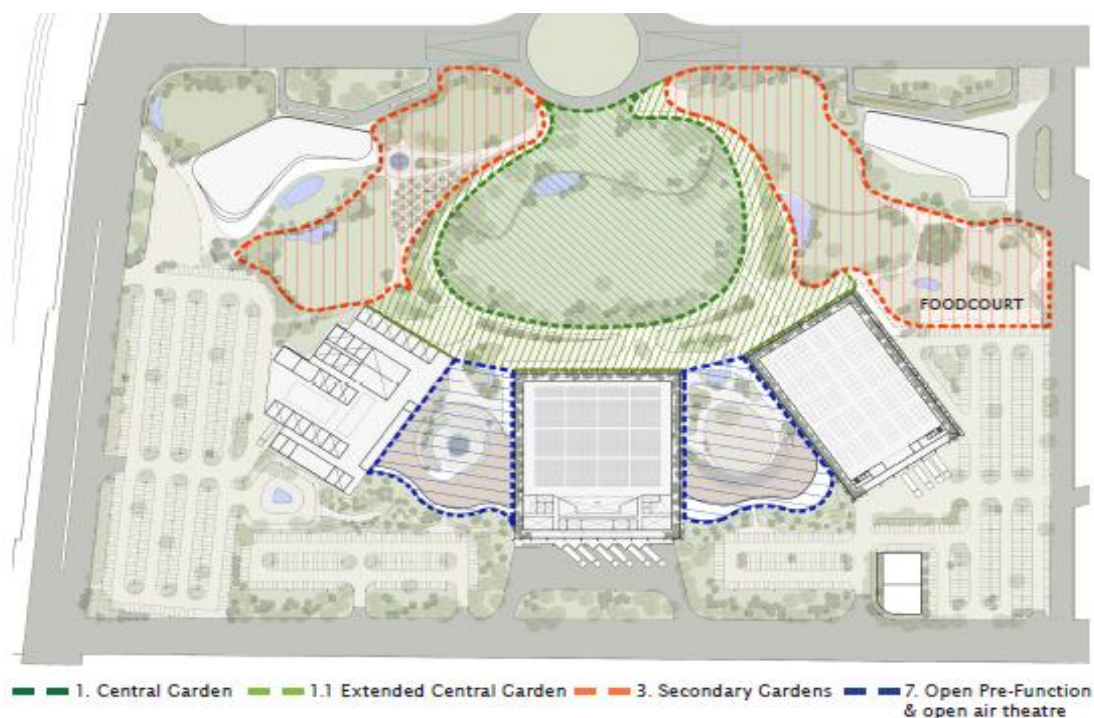
Apart from the central garden, these secondary gardens are provided in at both the eastern and western ends which are divided into smaller gardens which can be clubbed together and rented as spaces to hold events such as weddings and functions. These have smaller more intimately landscaped spaces than the central garden. As these are in close proximity to the hotels there is the possibility of them being rented by the hotels to hold big weddings or similar functions.

The food court is also planned as part of the secondary gardens which is also accessible from the main convention hall, exhibition centre. The same is also accessible from the pathways and the road outside so that people from other parts of the business park can eat here making sure the place is always active. The secondary gardens cover an area of 19000 sqm approximately. A food court is also considered as part of the secondary gardens and is accessible from the convention exhibition halls and business village as well as from the road outside so that people from other parts of the business park/other developments can access the facilities thus ensuring the place is always active. These garden spaces, pre function areas along with the smaller meeting halls or separately can be utilized for smaller functions and parties making it a happening place in the evenings and holidays.

F.Open Pre-Function Spaces & Amphitheatre

The pre-function spaces are located between the convention, exhibition and business village. These spaces serve as gathering areas as well as places to hold more intimate functions. Visibility and orientation are key design factors in these areas with the individual buildings clearly identifiable through the inherent organization of space. The open air theatre is a part of this space. The theatre is a key part of the scheme to activate the area and provide a destination where public shows can be held in the open. These events can vary widely between cultural events such as music, talks, theatre performance or alternatively more commercial or promotional oriented events. **The segregation of the gardens and the open spaces as per the preliminary design is as in figure below.**

Figure 11: Gardens & open spaces as per preliminary conceptual layout



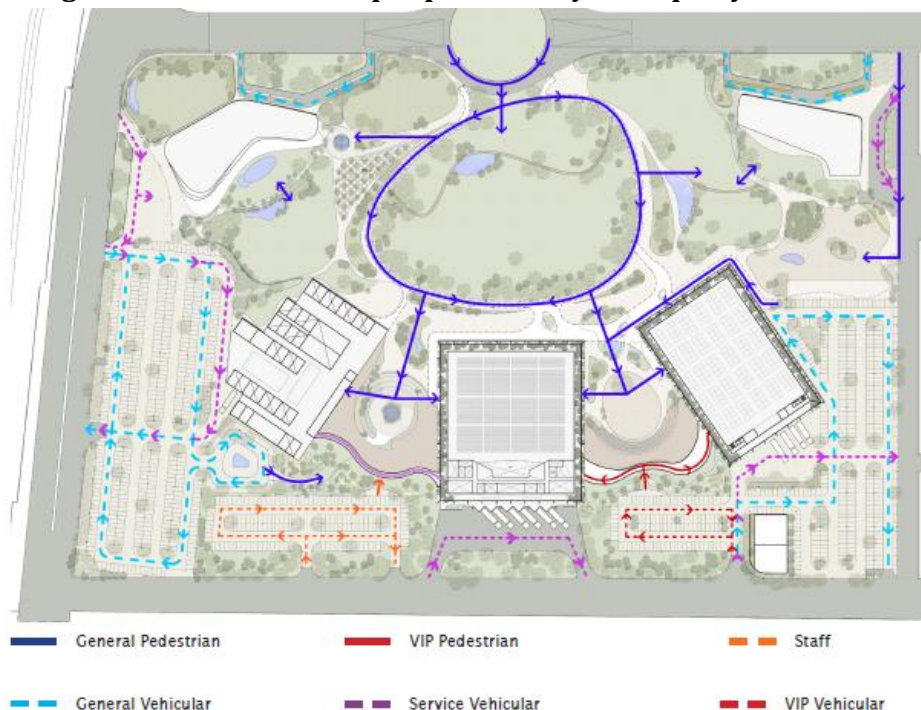
G. Circulation Spaces

Clear, organized circulation is essential for a conflict free movement of pedestrians, vehicles, servicing facilities. A network of pathways for pedestrians, VIP vehicles, other vehicles, and service vehicles have been incorporated in the conceptual design for attaining the objective of reducing conflict points..

The pedestrian and vehicular circulation is segregated throughout the masterplan. The main pedestrian entrance is from the front through the central garden whereas the main vehicular entry is from the Southern rear end of the site. The VIP and general public circulation has also been segregated with VIPs having their own entrances and exits. Service entry and exits have also been provided as separate from the general entrances and timing for entrance of service vehicles shall be regulated by the operator.

The walkways allow for the orderly and convenient circulation of large crowds of people with adequate gathering space at intervals so as not to restrict circulation. These provide clear pathways to major components (plenary hall, exhibition hall, business village and hotels). Special care has also been provided to ensure that the pathways and circulation are user friendly for the differently abled. In certain regions walkways are shaded with a pergola and lined with trees, greenery. The pathways have been aligned to maintain a visual connection with the green spaces, buildings and other activity areas. The pathway design has been done so as to provide an ambience of walking within a green corridor / garden.

Figure 12: Circulation as per preliminary concept layout



H. Parking Spaces

All parking is near the southeastern and south western end of the site with space for general public, staff, physically challenged and VIPs being provided separately. On surface parking for 1070 cars has been provided. 2 lane roads have been provided for the access roads. Space has also been allocated for multi-level parking lots to ensure space for 1600 ECUs. The total area of the land allocated for surface parking as per preliminary conceptual master plan is approximately 36525sqm.

I. Hotel -1: Midscale Hotel/ 5 Star Category Hotel

The midscale hotel has been conceived as a full service 250 room property with a superior level of finish and modern guest-room amenities. This Hotel may be utilized as the 'host' hotel for the convention and exhibition facility. The details on the various facilities planned for preliminary design of the hotel are provided below.

- 250 guest rooms with a standard bay size of 30 sq.mt., guest-room amenities including TV, mini-bar, channel music, electronic safe, telephones, internet etc
- Of these 250 guest rooms, 20 are proposed to be 2-bay suites measuring 60 sq.mt.
- A 250 cover all day coffee shop, two specialty restaurants of 100 covers each, a bar with 75 covers, poolside F&B space with 50 covers and a Club measuring 186 sq.mt.
- A 3,000 sq.ft. spa and gym area apart from recreation facilities including a swimming pool
- A Board Room of 600 sq.ft. for smaller meetings of upto 30 pax.

2. Core Minimum Development Obligation (CMDO)

The components to be developed as CMDO is as below:

Slnno	Components of CMDO
1.	Convention Hall including all amenities as per International Standards
2.	Exhibition Hall including all amenities as per International Standards
3.	Business Village (Meeting Rooms) including all amenities as per International Standards
4.	Multilevel Car parking for minimum 1000 Cars
5.	Internal Infrastructure including the following: (i) Internal Roads within the 35 acres (ii) Water Supply & Sewerage systems (iii) Power (iv) Rain Water Harvesting (v) Solar Energy (vi) Solid waste disposal system

3. Other Minimum Development Obligations

Slnno	Components of OMDO
1.	250 Room Hotel of minimum 5 star category

4. Specifications and Standards

The Project / Project Facilities shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-II
(Schedule-B)

Description of International Convention Centre

1. Description of International Convention Centre

Convention Hall

The main Convention Hall shall be designed to accommodate a minimum of 6000 persons in theater style with a minimum of 1.2 sqm per person. The main Convention Hall shall have a column free space of minimum of 8000 sqm approximately. The clear height of the plenary hall to be a minimum of 10mts to the underside of the catwalks/acoustic baffles/any structure hung below the primary structural roof trusses. The quality of finishes of the plenary hall to be equivalent or more than that considered for a 5 star hotel. The acoustics, lighting and additional facilities shall be designed for various uses viz Conferences, conventions, concerts, Operas etc

Pre- Function Hall

The pre function hall to be designed to accommodate all the people who can be in the plenary hall at one time based on a ratio of 1 person per 0.75 sqm of area.

Business Village

The components of the business village are as follows:

- 5 meeting halls of 200 people each, which can be subdivided into 10 meeting rooms of 100 each or 20 meeting rooms of 50 each (total capacity = 1000)
- 1 meeting hall of 1000 (divisible into 2 halls of 500 each) (total capacity = 1000)
- CM's office and secretariat, lounge
- VIP lounges, 1 VVIP lounge
- Business centre including upto 10 small conference rooms
- Administrative offices

The Convention centre to have international standard lighting, acoustics, , Simultaneous Interpretation facilities , wireless connection facilities for high speed internet access, supporting AV facilities including but not limited to large LCD screens/video walls etc. To ensure maximum safety and security for the events, the centre to also be equipped with fully integrated, network-based system, latest quality surveillance systems, CCTVs etc so as to provide maximum coverage.

2. Specifications and Standards

The International Convention Centre shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-III
(Schedule-B)

Description of Exhibition Halls

1. Description of Exhibition Halls

The exhibition hall to have a built up area of minimum 9500 sqm of which a minimum of 6500 sqm shall consist of large span column free flat floor structure

2. Specifications and Standards

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

Annex-IV
(Schedule-B)
Description of Hotel

1. Description of Hotel

i. Hotel-1

Midscale Hotel/ 5 Star Category Hotel of minimum 250 rooms

2. Specifications and Standards

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

Annex-V
(Schedule-B)

Description of Commercial Development

1. Description of Commercial Development

The commercial development may include the following:

- (i) Retail & Entertainment Space, Commercial space, subject to a maximum built up space of 5.0 Lakh / Sq. Ft.
- (ii) A 3 Star or Higher Category Hotel

2. Specifications and Standards

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

Annex-VI
(Schedule-B)

Description of Multi-level Car Parking

1. Description of Multi-Level Car Parking

The Multi Level Car Parking shall be developed for a minimum of 1000 ECS as per requirement.

2. Specifications and Standards

The Multi-level Car Parking shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-VII
(Schedule-B)

Description of Open Areas and Gardens

1. Description of Open Areas and Gardens

The concessionaire shall include a main garden area of minimum 15000 sqm and secondary gardens and other garden areas of minimum 28000 sqm .

The above garden space excludes any open spaces /walkways, roads and place for amenities & services that may be proposed in the design.

2. Specifications and Standards

The Open Areas and Gardens shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.

Annex-VIII
(Schedule-B)

Description of Internal Infrastructure

1. Description of Internal Infrastructure

- i. Internal roads
- ii. Walkways
- iii. Water Supply systems
- iv. Sewerage & drainage Systems
- v. Rain Water Harvesting
- vi. Power
- vii. Solar Energy systems

2. Specifications and Standards

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

Schedule – C
(see clause 2.1)
PROJECT FACILITIES

Details of Project Facilities shall be as hereunder:

1 CORE MINIMUM DEVELOPMENT OBLIGATIONS (CMDO)

The Core Minimum Development Obligations (CMDO) as in Annexure-I of Schedule-C

2 OTHER MINIMUM DEVELOPMENT OBLIGATIONS (OMDO)

The Other Minimum Development Obligations (OMDO) as in Annexure-II of Schedule-C

3 OTHER OPTIONAL PERMISSIBLE FACILITIES

The other Optional Permissible Facilities as in Annexure-II of Schedule-C

4 PROHIBITED ACTIVITIES:

The list of Prohibitive activities shall, inter alia, include:

General:

The Bidders must note that the Project and facilities to be developed are meant for the indented activities and bona-fide use only. No use or activity, which is prohibited under the law of the land, shall be allowed.

Environmental Rules and Regulations

No activities and uses, which are prohibited under the Environment (Protection) Act 1986 and Environment (Protection) Rules 1986, Karnataka State Pollution Control Board Regulations, to the extent applicable, shall be allowed.

Development Regulations

No development, which is not conforming to the *Planning & Development guidelines of BIAAPA/Government of Karnataka*, shall be allowed.

Annex-I
(Schedule-C)

Project Facilities for CMDO

The Core Minimum Development Obligations consists of the following :

- A. Main Convention/Plenary Hall of minimum 6000 seater capacity and associated facilities
 - B. Exhibition Hall of minimum 6500 Sqm and associated facilities
 - C. Supporting Meeting Rooms with associated facilities
- The facilities shall be modular and expandable as per future demand

A. Convention hall of 6000 seater capacity and associated facilities

The main project facilities envisaged in the component is as below:

(i) Passenger Drop Off and Pick Up Areas

The main convention/Plenary hall should have main passenger drop off /pick up point and user friendly facilities for differently abled. There shall also be facilities for o separate VVIP/VIP/entry/exit.

(ii) Main Convention Centre Foyer

It is essential that the Main Foyer is large and spacious and at the same time provides a central core to the facility. During conventions the foyer shall form a natural hub with a concierge / information counter, large convention central registration, toilets and box office for ticket sales to entertainment events, café and lounge with food and beverage services that provides an easily identifiable reference point from which delegates can orient themselves. The Main Foyer and Concourses shall be large enough to accommodate the maximum number of people who could be in the main Plenary Hall at any one time based on a ratio of 1 person per 0.75 m2. The foyer should essentially have the following facilities:

- a. Customer Service Counter
- b. Box Office (Public Events)

(iii) VVIP Entry Foyer and Lounges

The VVIP Foyer shall be separate from the public foyer however a secure and walkway connection shall be provided between the two foyers. The VVIP Foyer will have separate access, service corridor, stairs and/or lift for in-house service staff. The VVIP Foyer shall have secure stairs and escalators that enable VVIP's to traverse to other areas of the facility as required.

(iv) Plenary Hall Pre-Function and Foyers Areas

The pre-function or foyer spaces serve as a gathering location for delegates and patrons to enjoy a lounge atmosphere with limited food service and/or to act as a holding area. The pre function spaces must be of sufficient size to accommodate the same number of patrons within the function space. The Plenary Hall Pre-function and Foyer space shall be an air-conditioned, column free space with a total clear

space of 0.75 sqm per person based on the Plenary Hall seating capacity. Throughout the pre-function and foyer areas, smaller-scale lounge retreat spaces should be provided where delegates can discuss business in semi-privacy.

(v) Convention / Plenary Hall with 6000 pax

The Convention / Plenary Hall shall have a minimum of 6000 seats in theatre style in full plenary session for conventions and entertainment performance events, with the ability to be reduced in size to accommodate smaller capacities comfortably. The hall should have a column free space of 8000 sqm and the approx clear height of the plenary hall is around 10mts to the underside of the catwalks/acoustic baffles hung below the primary structural roof trusses. The hall should have the following facilities.

- a. Simultaneous Interpretation System
- b. Front Stage
- c. Plenary Hall Backstage
- d. Stage Door Entry and Reception
- e. Stage Door Security Office
- f. Chorus Dressing Rooms
- g. Star's Dressing Rooms / Speaker Preparation Rooms
- h. Production Office
- i. Wardrobe Room
- j. Laundry Room
- k. Green Room
- l. First Aid
- m. Holding Area
- n. Storage

The hall and seating to be designed to have a clear sightline to the platform and any audio-visual presentations.

B. Exhibition Hall & Associated Facilities

An Exhibition Hall shall be provided in a location adjacent to the Plenary hall and shall be designed to double as a space for banqueting and wedding events. The hall shall be 5000 Sqm of column free space and able to be divided into 3 separate function Rooms using acoustically rated operable walls. The other facilities are as below:

- a. Exhibition hall Pre-Function
- b. Exhibition hall Stage
- c. Exhibition Hall Fly Tower
- d. Storage

C. Supporting Meeting Rooms with Additional Facilities

(i) Meeting Rooms

Meeting Rooms are generally in the ranging from 10 to 1000 persons which can be used in a variety of modes such as theatre style seating, classroom seating, cocktails, breakfasts, luncheons or banquets, either in conjunction with a convention or hired separately by independent parties for meetings, seminars or functions.

The total capacity of Meeting Room and Breakout Room floor space shall equate to the total seating capacity of the Plenary Hall and be based on theatre style seating using an allowance of 1.2m² per person.

(ii) Breakout Rooms

Breakout Rooms are smaller meeting or committee rooms catering for groups of between 20 and 50 persons in theatre style, used when a conference breaks down into smaller focus groups, or for seminars or board meetings.

- a. Breakout Room Pre-function
- b. Breakout Room Back of House
- c. Breakout Room Storage
- d. Audio Visual and Lighting Control Rooms

The rooms should also have facilities for rehearsal by Speakers and have space for multiple speakers to check their presentations and meet with others. The same should also be located within easy reach of the meeting rooms.

(iii) Business Centre

Convention delegates, exhibitors and organisers require facilities to conduct on-going business or communicate with their offices or clients during an event. The Business Centre shall be located off a high profile delegate pedestrian traffic area that is central to the Convention Centre Plenary Hall, Auditorium, Conference Halls and Meeting Rooms.

- a. Reception Area
- b. BOH Store
- c. Common Sitting Area.
- d. Meeting Rooms and Boardrooms
- e. Computer Suites
- f. Video Conference Room
- g. Press Centre
- h. Media Work Room

(iv) VVIP Executive Pod

A secure VVIP Executive Pod shall be provided within close proximity to the Press Room, Conference Hall and Plenary Hall and shall have the following facilities.

- a. VVIP Foyer Area
- b. VVIP Boardroom
- c. VVIP Lounge
- d. VVIP Boardroom and Lounge Toilet Provisions
- e. VVIP Executive Suites with individual toilet and shower facilities

(v) Venue / Facility Management Accommodation

Administration should be easily located from within the building without entering the pre-function areas of the building. The minimum facilities provided shall be as below:

- a. Administration Reception
- b. Administrative office and meeting room
- c. Individual Offices
- d. Workstations
- e. Pantry
- f. Photocopy / Facsimile and Mail Room
- g. Storerooms
- h. Archives / Document Room
- i. Male & Female Toilets
- j. Staff Entry and Exit

- k. Security Check Point
- l. Interview Room
- m. Staff Change Rooms
- n. Preparation Room
- o. Staff Briefing/Training Room
- p. Security/Fire and Safety Centre

(vi) Other facilities

- a. Public Medical Centre 60m

The Public Medical Centre shall be located on the Ground Floor in an area that has direct access to ambulance parking and is accessible to from the public circulation areas.

- b. In-House Services Yard

The in-house services yard shall be separate from the Convention and Exhibition Centre Loading Dock. The in house services yard shall be for the use of delivery of food and beverage, administrative equipment and in house departmental deliveries by truck, collection of waste and recycling services.

Annex-II
(Schedule-C)

Project Facilities for OMD0

Hotel-1

5 Star Category Hotel of minimum 250 rooms

Annex-III
(Schedule-C)

Project Facilities for Optional Permissible Facilities

- i. Retail & Entertainment facilities**
- ii. Any other commercial space subject to approval of the Authority**

Schedule – D
(see clause 2.1)
SPECIFICATIONS AND STANDARDS

Annex-I
(Schedule-D)
Specifications and Standards

Specifications & Standards

The following specifications and standards are indicative and not comprehensive. They cover only some of the minimum requirements for the development. The Concessionaire shall construct, operate, maintain and manage the proposed International Convention Centre and allied facilities strictly conforming to the relevant Indian standards, the best industry practices and internationally acceptable norms. Whether the requirements are explicitly stated or not in the RFP documents, it may be noted that Government of Karnataka envisages and expects a truly international standard convention facility in all respects from the selected Concessionaire, as the binding contractual obligation.

1. Site Development related specifications

- (i) The Concessionaire should provide landscaping, internal road network and parking areas within the site.
- (ii) The internal paving to be a combination of bituminous/concrete pavements, concrete paving blocks, interlocking paving blocks, landscaped garden and green areas
- (iii) All internal roads for vehicular traffic should be two lane as per IRC standards.
- (iv) The internal road network and parking area should be designed and built in such a way that the vehicles destined to the proposed ICC are not parked on the roads of surrounding facilities.

2. Civil and Structural Requirements

- (i) The buildings shall be designed in accordance with the latest Indian Standard Codes and shall be designed to resist wind and seismic forces.
- (ii) RCC structures shall be designed as per IS 456: 2000
- (iii) Steel structures shall be designed in accordance with the provisions of IS 800 – 1984. Structural steel shall conform to IS 2062. Tubular sections would conform to IS- 4923.
- (iv) Concessionaire is advised to carry out its own tests and investigations related to soil condition, strata, bearing capacity and other characteristics.

3. Multi-purpose/ Plenary Hall Specifications:

(i) Retractable Seating

Automatic Retractable seating shall be provided in the Multi-Purpose Convention Hall of 6000 capacity. The retractable seating shall be for a minimum of 2000 or as per design requirement and in accordance with the latest standards as adopted by International Convention Centres. The retractable seating may utilize Power Assist for System Operations, and Semi-Automatic for Chair operation or any other latest technology as per standards. The provision also shall be made in accordance with relevant standards for building, materials and fire safety.

(ii) Equipment and Audio Visual System

- (a) Provision for Simultaneous Interpretation Systems (SIS) shall be made in the Multi-Purpose convention Hall and to be as per requirement of the planned seating capacity ie. minimum 6000 delegates. Minimum requirements for SIS are an interpreter's control unit, and 1 table top transmitter per target language, 1 receiver and headphone, or headset per participant. The booths can either be fixed or mobile booths. Provision shall be made for upto 6 to 8 language interpretation booths with

Nos. of Wireless IR Receivers with headphones for reception of simultaneous language interpretation. The equipment can be radio or infrared frequency equipment or any other latest technology as per standards. The Concessionaire shall comply with the relevant international standards for all the equipment. Table 1 provides a list of equipment.

Table 1: Interpretation Equipment: Convention Hall

Interpreter's Control Unit	
1.	Interpreters Headphones
2.	Microphones
3.	Amplifiers
4.	Control consoles
5.	Fixed/ Mobile Booth
6.	Risers, Video Monitors, and other equipment
Equipment for the Participants	
1.	1 top transmitter per target language
2.	1 Receiver and headphone or Headset per participant

- (b) Sound Reinforcement system for the entire hall suitable for Speech / Light/rock music concerts, seminars, lectures, presentations, operas etc. using latest technology and international standards
- (c) Rear projection Screens & LCD Projector for detailed presentations of all formats of video from presentations to motion picture.
- (d) Auto dome CCD Cameras for capturing live video of the stage proceedings and project on the main screen display.
- (e) Video Distribution of the proceedings of the Hall to the entire Convention Centre through various Plasmas & TV placed at selected locations / rooms.
- (f) DVD Recorders enable recording & Storage of all the interpreted languages or floor language along with video directly on the DVDRs.
- (g) Wired microphones for Podium or stage applications.
- (h) Wireless microphones, either handheld tie-clip for wire-free application of microphone source.
- (i) Microphone mixing console to manage various I/P sources from the control room.
- (j) Latest technology DVD Players, Music Sources.
- (k) Provisions for Inputs from various I/O devices like laptops, documents cameras, slide projectors, etc. through the interface plates in the floor boxes.
- (l) Provisions for various inputs / Outputs from above the truss for more LCD Projectors, motorized screens etc. through interface modules placed above the bars.
- (m) Touch Screen control / monitoring of the AV equipment in the entire convention hall enable the use of multiple equipment at the touch of a single button.
- (n) Ceiling Speaker as per latest international standards
- (o) Wifi connectivity and provision for live streaming the audio /video via internet

- (p) Public address system, announcement and electronic message monitors in public areas.
- (q) Multiple phone/fax outlets for registration and business areas, and outlets for computer modems.
- (r) The audio visual equipment shall be flexible, comprehensive and adjustable
- (s) The facility preferably should have movable panels and storage which can easily be erected to neatly enclose audio visual operator and equipment at the back of meeting rooms.

4. Exhibition Hall Specifications:

(i) Floor Loading

The Floor Loading should be 20,000 kg per square meter.

(ii) Operable Walls

The larger halls should be able to be partitioned into smaller single independent halls by operable walls.

The facilities of exhibition hall mentioned above is only indicative. The Concessionaire shall ensure that the facility shall be as per standards as required for holding international events.

5. Telephone/ Data-lines

- (a) One to four extensions or more per service pit, as per requirement which can be , accessed by service pits on a 6 meter x 6 meter grid or as may be required .
- (b) Four outlets per pit on a 6 meter x 6 meter grid or as may be required as per design standards
- (c) Single-mode and multi-mode fiber backbone to BD/FD.

6. Power

Maximum load should as per design standards. There should be electrical service pits per hall on a 6 meter x 6 meter grid or as per requirement. Each electrical service pit should have one 32 amp 3 phase neutral and earth switch plug socket/ or as per design requirements. Each hall should have access to 300 amp, 125 amp 3 phase neutral and earth linked boxes or any other as per design requirement for electrical load exceeding the service pit outlets capacity. All pits should be linked by conduit in the slab. Service Pit Covers in Halls and the corridors shall be made of metal plate in accordance with safety standards. The facility should have multiple power points, easily accessible, built into floors, walls and ceilings in all areas likely to require it (convention/exhibition halls, both meeting rooms and open spaces). Power points shall be clearly labeled with circuit breaker number and phase around all meeting rooms on multiple circuits to spread loads. The facility should have complete back up system for emergencies to maintain all services (standby generator with uninterruptable power supply or similar).

7. Acoustics

The acoustics for the convention hall shall be of International Standards and to be designed for a multi – use facility ie. For holding conventions, meetings, performances (music, operas orchestra etc). The parameters mentioned below are only indicative and the acoustic design shall be done as per latest standards to be followed for International convention centres

- (i) The partition between two meeting halls should have a Sound Transmission Coefficient (STC) of 70 dB measured with dual-channel spectrum analyzers as per ISO 140.
- (ii) The ideal reverberation time should be around 1.25 seconds in unoccupied state, measured as per ISO 3382.
- (iii) Ambient sound levels within all dedicated conference rooms exceed 35 NC Background Noise Criteria) and Reverberation Time (RT) of lower than 1.2 seconds at mid frequency.
- (iv) Built-in sound systems are required for any room greater than 93m² (1,000 sq ft) if to be utilized for meetings, performances etc.
- (v) Acoustic ratings for sound transmission between dedicated conference rooms exceed 45 NIC (Noise Isolation Class) for all adjoining walls.

8. Entry/Exit Facilities

- (i) Easily identifiable entrance and exit, weather protected entry and reception area and clear external signage
- (ii) Sufficient number and locations of exits shall be provided for the total capacity
- (iii) Door widths shall not be less than 2 m wide
- (iv) Separate entry/ exit shall be provided for VVIPs/delegates
- (v) Provision for smooth entry/exit for differently abled
- (vi) Covered walkways connecting various areas within the venue and weather protection to transport pick up and drop off points may be provided as required

9. Air Conditioning

The Air-Conditioning in BICC shall be as per the relevant standards and specifications of NBC, BIS and other recognised international standards.

10. Support Facilities for BICC

The support facilities for the development shall be as per requirement of International Standards. The facilities in the prominent International Convention Centres shall be used as benchmarks to international standards wherever relevant. However, appropriate provisions in line with the national standards like NBC, BIS, recognized International Standards and the best Industry Practices will have to be made by the Concessionaire based on detailed architectural & structural designs.

11. Signages in BICC

The Concessionaire shall provide signages so as to facilitate necessary information to the visitors regarding amenities and their location. They shall be provided in English , Hindi &

Kannada based on the requirement. The signage shall include Information Signs, Facility Signs, and other Signs and can be either external or internal.

The following to be considered for External and Internal Signages in the development

- (i) External Signage
 - (a) Clear signage on main access routes from the venue /arrival points to the venue
 - (b) External signage at roof level sufficient for identification of venue.
 - (c) External signage at ground level sufficient for direction of pedestrian and vehicular traffic
 - (d) Temporary customizing e.g. with electronic display to enable specific events to be announced.
 - (e) Flagpoles for clients' flags or banners.
 - (f) External and flood lighting consistent with the image of the venue.
 - (g) All external signs using universal/international symbols.
 - (ii) Internal Signage
 - (a) All meeting rooms, public spaces and other facilities well signposted, and clearly labeled, in words and internationally recognised symbols including tactile signage for the visually impaired.
 - (b) Visible directory board in foyer updated regularly and location plans throughout.
 - (c) Colour coding of facilities and different levels or sectors.
 - (d) Temporary sign holders compatible with décor. Wall mounted and free standing to be available.
 - (e) Well located, accessible hanging points or locations in meeting and public spaces.
- Wherever possible, the signages shall be designed to utilize solar energy.

12. Minimum Parking Area

- (i) Car parking spaces, covered or open, shall be provided for a minimum of 1,000 cars and a segregated VVIP car parking shall be provided for a minimum of 50 cars with separate entrance and exit points.
- (ii) Minimum carriageway of pavement for circulation space within parking facilities shall be as per IS/IRC standards.
- (iii) All parking spaces shall be paved to withstand vehicle loads and forces due to frequent acceleration and deceleration of vehicles. Parking bays/lots shall have proper cross slope and drainage. They shall be marked with paint as per Indian Standards to demarcate parking and circulation space.

13. Hotel

The development shall have two hotels to act as innate facility for the convention and exhibition facilities. One of the hotel would be of 250 rooms of Minimum 5 star category . The facilities amenities and supporting facilities of the Hotels be separately provided and should not conflict with those at the CMDO .

14. Supporting Facilities and Amenities to OMDO & Optional facilities

The Concessionaire shall provide all the necessary supporting facilities and amenities conforming to the development controls and shall meet the relevant Indian and International Standards.

15. Fire fighting Facilities

The Concessionaire shall provide the required fire fighting equipment and facilities including fire exits, fire proof doors, etc conforming to the relevant standards and the applicable rules and regulations.

16. Facilities for Differently Abled Persons

The Concessionaire shall provide all the necessary facilities to the entry/ exit, seating and movement of differently abled persons including wheel chairs, ramps, specially designed seats, toilets, etc in the centre.

The concessionaire shall provide shallow grade ramps to provide direct access from the entry level and shall provide designated public areas that are accessible to wheelchair users. The entry may be provided with doors preferably with double-leaf panels to facilitate wheelchair entry. A wheelchair platform lift may be made available for the Plenary Hall and meeting hall stages and provision to be made for accommodating the wheel chairs at the venues. The concessionaire shall earmark parking bays for differently abled and the same shall be provided with entry and exit ramps. The same shall be preferably placed close to areas connected by elevators to the major components in the development.

17. Lighting

The lighting provisions mentioned below are indicative and shall always conform to relevant standards as may be applicable for international conventions and exhibitions.

- (i) Natural lighting to be utilized to the maximum extent possible.
- (ii) Lighting should be designed so that levels need to be easily adjustable and areas readily isolated. Dedicated conference rooms larger than 93m² (1,000 sq ft) should have zoned lighting and controls which permit dimming from full power to off.
- (iii) All dedicated conference rooms may have in-room control of lighting which when at maximum is between 500 & 700 lux at table-top.
- (iv) The track lighting/ special lighting on tracks shall be available as per requirement in main halls /smaller rooms
- (v) The lighting should be easily adjustable by the meeting organiser.
- (vi) Dedicated and flexible lighting systems in presentation areas to adjust to conferences/ meetings /live performances
- (vii) All lights capable of tight focus to prevent spill onto projection screens;
- (viii) Provision of Portable and wireless control systems may be provided to allow for operation anywhere in the hall/room.
- (ix) Exhibition areas should be assisted with circuits to assist display lighting and well distributed system to reach all parts of the area when displays are in position;
- (x) Exhibition area ceiling to have grid fixing points to mount additional lights and also to have extra lights for riggers working in roof trusses.
- (xi) Emergency and Exit lighting complying with the IS and International building code shall also be provided.

18. Finishes for Walls & Floors

- (i) Floor finishes shall be hard wearing, in neutral colours, and shall be non skid, and easily maintainable surface,
- (ii) The walls finishes shall be of Low maintenance and durable finishes.
- (iii) The walls for the convention halls and meeting halls shall be acoustically designed, flat, preferably with no intrusions, no protruding wall brackets etc.

19. Disaster management

BICC must be designed to the highest level of safety against fire, earthquake, wind or any other disaster. The emergency response systems shall be in accordance with specifications and standards.

20. Landscaping

- (i) The site identified for development of BICC is a water deficient area and hence the landscaping need to be designed to use treated /recycled water and should eliminate the use of potable water or subsurface water resources
- (ii) The landscape irrigation shall be designed by employing a Water Harvesting system that includes water recycling.
- (iii) The landscaping shall preferably be done using species of low water consumption plants. The vegetation thus shall be part of the local eco-system and help support the local ecology and will also be adapted to the local climate requirement with less maintenance.

21. Energy Reduction and Generation

The objective is to achieve enhanced energy efficiency by reduced energy use and creating optimum conditions for the use of passive and active solar strategies to reduce environmental and economic impacts

- (i) HVAC system must be designed so that it will provide the most energy efficient operations. The system must be broken into modular zones that can be controlled for operations when single or multiple halls are in operation.
- (ii) As far as possible energy efficiency lightings shall be utilized. The option of Solar Powered LED lighting systems shall be explored for interior lightings, landscape and street lighting
- (iii) The roof mounted Solar P-V array is proposed for the developments which will not only generate electricity for the site, but can also shade the building reducing the peak load for HVAC systems saving in operational costs.

22. Water Conservation and Rainwater Harvesting:

The objective is to minimize the usage of water by taking advantage of the seasonal monsoon rainfall on the site in creating an efficient rainwater harvesting system.

- (i) The Rain Water Harvesting System may be designed to be fed by storm water from the rooftops of the buildings, paved areas and the open spaces into drains that lead to collection/ settlement ponds.
- (ii) The water goes through a natural filtration process at this point and is pumped into series of ponds and cascades, that further cleanse, scrub and aerate the water.
- (iii) All buildings in the site are highly encouraged to create on-site water harvesting systems that tie into rain water and the Grey-water.
- (iv) The system shall as far as possible use non-chemical or natural bio-filtration plants for cleansing the harvested rainwater.

23. Water Use Reduction:

The objective is to maximize water efficiency at BICC, to reduce the burden on water supply and waste water systems.

- (i) **Building Water Efficiency**
Employ strategies that in aggregate use 20% less water than the baseline calculated based on codes and standards. Use high-efficiency fixtures, and smart toilet systems to reduce the water demand. Consider the use of automatic flow faucets and flush systems to promote water usage efficiencies.
- (ii) **Landscape Efficiency**
Usage of harvested rainwater or recycled waste water. Use of Xeriscape landscape practice techniques (drought resistant, adapted to the local environment and non-invasive, low maintenance plant species.). Consider the use of drip irrigation techniques rather than flood or sprayed irrigation techniques.
- (iii) **Augment rainwater harvesting system with non-potable water recycled from Grey-water.** Minimize water use for landscape by utilizing post consumer recycled Grey-water and harvested rain water and site waterscape.
- (iv) **Design building sewage system with separate lines for sewage (from Water-Closets) and Grey-water (from sinks, showers, cloth washing, etc.).** Grey water can be processed on-site and recycled for irrigation and other non- potable uses such as toilet flushing.
- (v) **Options for on-site waste water treatment include packaged biological nutrient removal systems and high-efficiency filtration systems.**

24. GREEN Building

The Core Minimum Development Obligations (CMDO) should conform to a minimum of Silver Rating of the Leadership in Energy and Environmental Design (LEED) by the US Green Building Council or Equivalent.

25. Security Systems

To ensure maximum safety and security for the events, the centre should be equipped with fully integrated, network-based system, latest quality surveillance systems, CCTVs, alarm systems etc so as to provide real time coverage both audio & video.

26. Multi Level car Parking

- (i) All standard facilities as required for Multi-level parking shall include but not limited to the Mechanised Parking Facility, Adequate Car Lifts, Toll Plaza/ Booths adequately computerized
- (ii) The design criteria like loading standards, permissible stresses and quality standards, to be followed for the preparation of design and drawings will be as per the latest standards, codes and recommendations of the Indian Bureau of Standards (In case of absence of suitable IS specifications and code of practices, other recognized international Standards and codes shall be applicable).
- (iii) The parking system shall be designed for permitting cars with atleast following minimum characteristics:
 - a. Max Length 4.8 M
 - b. Max Height 2.0 M
 - c. Max Width 1.9 M

Maintenance and Performance Standards

The following maintenance and performance standards cover only some of the minimum requirements for operation. The Concessionaire shall operate, maintain and manage the proposed International Convention Centre and allied facilities strictly conforming to the relevant Indian standards, the best industry practices and internationally acceptable norms. Whether the requirements are explicitly stated or not in the RFP documents, the Bidders must note Government of Karnataka envisages and expects a truly international quality and standard convention facility in all respects from the selected Concessionaire, as the binding contractual obligation.

1. General

During the period of operation, the Concessionaire shall maintain all the facilities in accordance with performance standards and maintenance requirements, as mentioned below:

- (i) Perform maintenance on a routine and periodic basis.
- (ii) Provide functional facilities that (a) meet the convention centre requirements; (b) have an environmentally acceptable atmosphere for users of the facility; (c) ensure safety and security of VVIPs; (d) ensure the safety of the visitors; and, (e) maintain a good environment in the site conducive to all tourism and leisure facilities.
- (iii) Identify potential problems early within the context of the planned maintenance system so that corrective action may be planned and completed in a timely manner.
- (iv) Establish a maintenance list for planned operation and maintenance. Follow an orderly program so that maximum operational efficiency is attained.

2. Maintenance Works

- (i) The Concessionaire shall perform routine and periodic maintenance activities for the project infrastructure viz, civil, mechanical and electrical works and equipment, furniture for meeting the specified performance standards as per *Table 1* below.

Table 1: Maintenance Requirement

Description	Required Level	Facility/ Equipment
Power Supply, Electrical Installations, Electrical Equipments	Standby power arrangements shall be made for necessary amenities like ticketing counters, facilities, etc. No loose, open, un-insulated wiring any of the areas. Switch Boards, Electric meters are enclosed in boxes and access to authorized persons only.	Standby power supply by DG sets shall be ready to be operated and should be available 24 hours
AC/AHU/Temperature Control in the facility	The AHU/ A.C. plants should be operated satisfactorily to maintain required temperature in the different zones of the buildings. The same shall meet the specifications as prescribed in the in the IS Code	Any disruption to the facility shall be rectified within 3hrs in case of any event hosted during the period. Or latest within 24 hours. The facilities shall be periodically checked and

Description	Required Level	Facility/ Equipment
	and NBC /any other standard as required by International Convention Centres and similar developments	routine maintenance to be carried out
Natural and Mechanical Ventilation and Illumination for multi storey parking, if any	Shall meet the required Illumination level as specified in the IS Code and NBC. Shall meet the required Ventilation level as specified in the IS Code and NBC.	Any disruption to mechanical ventilation, if provided, shall be rectified within 24 hours. Arrangements for natural ventilation like skylights ventilators, shafts etc shall be cleaned after every 5 days.
Damage / Breach to the Boundary Wall	No Damage / Breach is allowed	Any damage / breach to the boundary wall shall be rectified within three (3) days after their the event.

- (ii) Maintenance of Circulation Areas of Convention hall, Exhibition Hall, other meeting rooms, Hotel, other permissible developments, etc.: Circulation Area maintenance shall include the entire house keeping activities requiring routine and periodic maintenance. Annual maintenance shall be done for accessories like AC fans, lighting arrangements etc in these areas.

3. Performance Standards: Intent

- (i) The performance levels define the level at which the proposed facilities are to be maintained and operated. Performance standards are defined for operation and maintenance of the facilities and the site environment.
- (ii) The obligations of the Operator in respect of Maintenance requirements shall include:
 - a) maintaining site environment so as to cause minimum disturbance to the environment
 - b) ensure that the facilities are operational and rectification of the defects and deficiencies within the minimum time
 - c) ensure that the fixed parameters provided in this RFP are abided by at any time during the Concession period
- (iii) Notwithstanding anything contrary to specified in this schedule, if the nature and extent of any defect justifies more time for its repair or rectification as compared to time specified herein, the Operator shall be entitled to additional time in conformity with good industry practice. However the Operator shall get prior approval from the Independent Engineer, for such additional requirements of time.
- (iv) Notwithstanding anything to the contrary contained in this schedule, if any defect, deficiency or deterioration in the project poses danger to the life and property of the users thereof, the Concessionaire shall promptly take all reasonable measures for eliminating or minimizing such danger.

4. Routine Maintenance Performance Standards

Table 2: Performance Standards for Routine Maintenance

Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
1.	Power Supply, Electrical Installations, Electrical Equipments shall be functional	Nil	Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours
2.	Natural and Mechanical Ventilation and Illumination for multi storey parking, if any, shall be functional	Nil	Any disruption to mechanical ventilation if provided shall be rectified within 24 hours. Sky-lits, ventilators, shafts etc shall be cleaned after every 5 days
3.	Boundary Wall shall be without any Damage / Breach	Nil	Any damage / breach to the boundary wall shall be rectified within three (3) days after their detection.
4.	There shall be no standing water on pavement surface, no water logging in the centre	Nil	Immediate measures to be taken and water logging should be cleared within four hours.
5.	All Toilets, Urinals, bathrooms shall be clean and functional	A minimum of 95% toilets and urinals shall be functional at any given point of time.	Toilets, Urinals, bathrooms shall be demarked with suitable sign boards. These should be kept clean and hygienic and cleaning shall be done at least twice daily.
6.	All drinking water chambers shall be clean and functional	A minimum of 95% drinking water chambers shall be functional at any given point of time	These shall be cleaned daily. Water supply shall be for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards.
7.	Dustbins, spittoons etc. shall be clean and functional	A minimum of 95% Dustbins, spittoons shall be functional at any given point of time	The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighborhood.
8.	All Information Signage and Display Boards shall be visible, legible and functional	Maximum 2% number of damaged signage and boards at any given point of time	These shall be cleaned once in a week. Damaged signage and boards shall be replaced, repaired within seven days of their detection
9.	Seating Arrangements shall not be damaged	Maximum 5% number of damaged	Any damaged seat shall be repaired, replaced within seven

Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
		seats at any given point of time	days of detection. These shall be cleaned daily and checked that they are firmly fixed/grouted to the platform with the base.
10.	Power Supply, Electrical Installations, Electrical Equipments shall be functional	Nil	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the Independent Engineer
11.	Staircases shall be clean and functional	Nil	The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within three days after detection.
12.	Illumination (Lighting) shall be functional	To meet the required illumination level as per national standards	The ventilators, sky-lights, etc serving as source of natural ventilation and other luminaries for artificial lighting shall be cleaned once in seven days to maintain the illumination level.
13.	Defects in Electricity gadgetry like bulbs/ lamp shades/ wiring/ etc	Nil	Temporary measures within 4 hours, permanent restoration within 7 days
14.	Defects in all other utilities like water supply/tap/tap connections/pipe/sewer and drainage pipes/ tank & overflow/ glasses window panes/ all other building furniture	Nil	Timely intervention with Temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required.
E	Telecom system/networking		
15.	Telecommunication and Networking Systems shall be functional	Nil	Temporary measures within 8 hours, and permanent restoration within 3 days
G	Fire Fighting Equipments		

Sl. No	Serviceability Indicator	Required Maintenance Level	Permissible Time Limit for repairs/rectifications
16.	Fire Fighting Equipments shall be functional	Nil	Any damage to fire fighting equipments installed in the facilities and in public spaces shall be rectified within 2 days of detection. Fire extinguishers shall be replaced before the end of its expiry date. The water tank meant for fire fighting purpose shall remain flooded with water to its capacity at all the times.
H	Water Tank		
17.	Water Tank shall be clean and functional	Nil	Water tank shall be cleaned and disinfected every month to ensure that no inorganic sedimentation takes place.

5. Periodic Maintenance Performance Standards

In order to maintain the quality and operational standards of high quality, the periodic maintenance/renewal activities are proposed for the Project in *Table 3*.

Table 3: Periodic Maintenance/ Renewal Activities

Sl.	Periodic Renewal Activities	Time Limit for renewal
1	Repainting of furniture, signages delineators, markings etc.	Minimum once in a year
2	Repainting of Buildings and all other structures.	Minimum once in three years
3	Repainting of carpentry work like joinery, doors, windows, ventilators, wooden furniture etc in the offices, cabins, booths etc.	Minimum once in three years
4	Resurfacing of Pavement	Routine repairs every year and premix carpet every fourth year. Incase the pavement is of Rigid type, no periodic renewal would be required except cleaning & filling of joints
5	Mechanical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

Sl.	Periodic Renewal Activities	Time Limit for renewal
6	Electrical Equipment	Minimum once in a year as per manufacturer's installation, operation and maintenance instruction manual

6. Performance Standards for Operation

Table 4: Performance Standards for Operation

Sl.	Parameters	Performance Indicators
1.	Convention hall, Exhibition Hall and Business Village(Meeting Rooms)	To remain fit for operation 24 hours a day throughout the year
2.	Hotel	To remain operational 24 hours a day throughout the year
3.	Parking Area	To remain operational 24 hours a day throughout the year
4.	Enquiry Offices	To remain operational 16 hours a day throughout the year
5.	Information System, Displays	To remain operational 24 hours a day throughout the year
6.	Toilets	To remain operational 24 hours a day throughout the year
7.	Water Supply	To remain operational 24 hours a day throughout the year
8.	Electricity Supply	To remain operational 24 hours a day throughout the year
9.	Telecommunication and Networking Equipment	To remain operational 24 hours a day throughout the year
10.	Standby Diesel Generator Sets	Standby diesel generator sets to supply power to the Project facilities must be available 24 hours a day, throughout the year in case of disruption or breakdown in power supply
11.	Maintenance Office	This shall remain open for 16 hours a day and throughout the year
12.	Security	To remain functional 24 hours a day throughout the year Appropriate fencing of the site with lighting and security shall be provided to ensure that there will be no encroachment on the site.

Schedule – E
APPLICABLE PERMITS

PART-I

i. Applicable Permits prior to Appointed Date

- 1.1 The Concessionaire shall obtain as required under Applicable Laws, the following Applicable Permits on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in accordance with Clause 4.1.3 of the Agreement:
- i. Approval of Project Development / Master Plan from BIAPPA
 - ii. Building Height clearance from Airports Authority of India (AAI)
 - iii. Karnataka State Pollution Control Board (KSPCB) and Ministry of Environment, Forest and Climate Change (MoEF&CC)

PART-II

ii. Applicable Permits prior to COD1 and / or COD2

The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits prior to commencement of the relevant activity:

- i. Shops & Establishment Registration
- ii. Sales Tax / VAT / GST Registration
- iii. Service Tax Registration

Schedule – F
(see clause 9.1)
PERFORMANCE SECURITY

Bank Guarantee No: [●]

To,

**The Karnataka State Industrial & Infrastructure
Development Corporation Ltd,**
4th Floor, East Wing,
Khanija Bhavan,
No.49, Race Course Road,
Bangalore 560 001

WHEREAS

1. (the “**Concessionaire**”) and the **Karnataka State Industrial & Infrastructure Development Corporation Ltd** (the “**Authority**”) have entered into a Concession Agreement dated (the “**Agreement**”) whereby the Authority has agreed to the Concessionaire undertaking the construction, operation, maintenance and management of the proposed Bengaluru International Convention Centre (BICC) Project (comprising the International Convention Centre (ICC) with a main Convention Hall of minimum 6000 seating capacity, exhibition halls and Food Court (based on the approved Theme / Concept and design brief thereof) alongwith other facilities / Project Components and related infrastructure in an integrated manner including Hotels/ service apartments, etc) at Bengaluru in the State of Karnataka on design, finance, build, operate and transfer (the “**DFBOT**”) 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 Authority in a sum of Rs.____ Cr. (Rupees ____Crore) (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 and undertakes to pay to the Authority upon occurrence of any failure or default in the due and faithful

performance of all or any of the Concessionaire's obligations during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

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

6. This guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, 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 under and this Guarantee will remain in force till the period mentioned in paragraph 11 below. Unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the Authority in writing, and declares and warrants that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
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 authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an Officer of the authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of Four years from the date hereof or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this day of, 2018 at

SIGNED, SEALED AND DELIVERED

For and behalf of the BANK by:

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

NOTES:

- (i) The bank guarantee should contain the name, designation and code number of the Officer(s) signing the Guarantee
- (ii) The address, telephone number and other details of the Head Office of the Bank as well as of the issuing Branch should be mentioned on the covering letter of the issuing Branch.
- (iii) The Bank Guarantee should be encashable and the Branch of the BANK situated at Bangalore

Schedule – G
(see clause 21.1)
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 Authority of such compliance alongwith necessary particulars thereof.

2. Project Milestones

2.1 Project Milestones shall occur on the following dates from Appointed Date (the “**Project Milestones**”).

Sl. No.	Milestone	Date

3. Scheduled Completion Date for CMDO – COD1

The Scheduled Completion Date for COD1 shall occur on completion of the 24th Month from the Appointed Date.

4. Scheduled Completion Date for OMDO – COD2

The Scheduled Completion Date for COD2 shall occur on completion of the 48th Month from the Appointed Date.

5. 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
PROJECT DPR, DESIGNS & 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. As built drawings

Upon completion of the Project, the concessionaire shall prepare all as-built drawings for the project and submit to the Independent Engineer for approval, as per the timelines, as mutually agreed.

3. Additional drawings

- 3.1 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. Detailed Master Plan alongwith details of land coverage, etc
2. Detailed Building Plans (including for all floors) alongwith area statement
3. Detailed sections of each Building (minimum at two locations)
4. Detailed Electrical Drawings (High Side & Low Side)
5. Detailed Plumbing Drawings (High Side & Low Side)
6. Fire Fighting Drawings
7. Air-Conditioning layout drawings
8. Traffic circulation plan
9. Detailed Computer Lan Drawings

Schedule – I

TESTS

1. Schedule for Tests

- 1.1 The Concessionaire shall, no later than 90 days prior to the likely completion of the CMDO and OMDO, notify the Independent Engineer and the Authority of its intent to subject the CMDO and OMDO to Test, and not later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and Equipment forming part of the CMDO and OMDO.
- 1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the OMDO / CMDO to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article-14 and this Schedule-I.

2. Tests

- 2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Engineer shall conduct, or cause to be conducted, the Tests specified in this paragraph 2.
- 2.2 Visual and Physical Test: The Independent Engineer shall conduct a visual and physical check of the OMDO / CMDO to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.
- 2.3 The buildings 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) and other applicable Tests as applicable for respective Project Facilities. 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) Result of compressive strength on concrete test cubes falling below the specified strength;
 - (b) Premature removal of formwork;
 - (c) Inadequate curing of concrete;
 - (d) Overloading 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 expected strength.

2.4 Tests for Equipment: The Independent Engineer shall conduct or cause to be conducted Tests including trial runs, in accordance with the relevant industry standards, equipment standards and Good Industry Practice, for determining the compliance of all equipment with the Specifications and Standards of Safety Requirements.

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

2.6 Other Mandatory Tests: The Concessionaire shall procure and ensure that all statutory tests required to be undertaken in accordance with the Applicable Laws for grant of operations licences by the respective authorities are undertaken and completed no later than 15 (fifteen) days prior to COD1 and COD2, respectively.

3. Agency for Conducting Tests

All Test set forth in this Schedule-I shall be conducted by an Expert Agency in the respective field in the presence of the Independent Engineer or such other agency or person as it may specify in consultation with the Authority.

4. Completion / Provisional Certificate

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

5. Tests during Construction

Without prejudice to the provisions of this Schedule-I, tests during construction shall be conducted in accordance with the provisions of clause 13.3.1.

Schedule – J
(see clause 14.2 and 14.3)
COMPLETION CERTIFICATE

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 Project [on design, finance, build, operate and transfer (DFBOT) 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 Project with the provisions of the Agreement, and I am satisfied that the CMDO / OMDO 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 OMDO / CMDO have been completed, and the CMDO / OMDO 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 Project land on design, finance, build, operate and transfer (DFBOT) 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 CMDO / OMDO 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 Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,) I 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 CMDO / OMDO, pending completion thereof.

3. In view of the foregoing, I am satisfied that the CMDO/OMDO can be safely and reliably placed in commercial service of the Users thereof, and in terms of the Agreement, the Project 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)

@ Strike out if not applicable.
SIGNED, SEALED AND
DELIVERED
For and on behalf of
INDEPENDENT ENGINEER by:

(Signature)
(Name and Designation)
(Address)

Schedule – K

MAINTANENCE REQUIREMENTS

1 Maintenance Requirements

- 1.1 The Concessionaire shall, at all times, operate and maintain the Project / Project Facilities 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-N (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 Authority shall be entitled to recover Damages as set forth in Clause 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

2 Repair/rectification of defects and deficiencies

- 2.1 The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies specified in Annex-I of this Schedule-K within the time limit set forth therein.
- 2.2 The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

3 Other defects and deficiencies

- 3.1 In respect of any defect or deficiency not specified in Annex-I of this Schedule-K, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Engineer.
- 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 Authority 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 Project 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 Periodic Inspection by the Concessionaire

The Concessionaire shall, through its engineer, undertake a periodic visual inspection of the Project 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 Authority 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 Project conforms to the Maintenance Requirements on the Transfer Date.

Annex-1
(Schedule-K)

Repairs / rectification of defects and deficiencies

Schedule – L
(see clause 27.4)
SERVICE QUALITY REQUIREMENTS

1. Service Quality Requirements

The Concessionaire shall, at all times, procure and ensure that it achieves the Service Quality Requirements as set forth in Annex-I, of this Schedule-L

2. Monthly Compliance Report

The Concessionaire shall, within 7 (seven) days of closing of each calendar month, furnish a monthly report on compliance of the Service Quality Requirements.

Annex-1
(Schedule-L)
Service Quality Requirements

Schedule – M
(see clause 19.1)
SAFETY REQUIREMENTS

1 Guiding Principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents at the Project Site / Project / Project Facilities, irrespective of the person(s) at fault.
- 1.2 Users of the Project / Project Facilities include staff of the Concessionaire and its contractors working at the Project / Project Facilities.
- 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 in Annex-I of this Schedule-M.

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;
- (c) provisions of this Agreement; and
- (d) relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

- 3.1 For carrying out safety audit of the Project / Project Facilities under and in accordance with this Schedule-M, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “**Safety Consultant**”). The Safety Consultant shall employ a team comprising, without limitation, one Hotel safety expert to undertake the safety audit of the Project / Project Facilities.
- 3.2 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review, compile and analyse the annual report and accident data of the preceding year, and undertake inspection of the Project / Project Facilities. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report (the “**Safety Report**”) recommending specific improvements, if any, required to be made to the Project / Project Facilities.

4 Safety measures during Development Period

- 4.1 The Concessionaire shall provide to the Independent Engineer, 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 elevated structures along with other incidental or consequential information. The Independent Engineer shall review the design details and forward one copy each of the Safety Drawings with its recommendations, to the Authority and the Concessionaire.
- 4.2 The design details shall be compiled, analysed and used by the Independent Engineer for evolving a package of recommendations consisting of safety related measures for the Project. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority and the Concessionaire.
- 4.3 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Project, 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.

5 Safety measures during Operation Period

- 5.1 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.
- 5.2 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in five copies) containing, without limitation, a detailed listing of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 5.1 of this Schedule-M for averting or minimizing such accidents in future.
- 5.3 Once in every Accounting year, a safety audit shall be carried out by a Safety Consultant to be appointed by the Authority. It shall review and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project / Project Facilities. 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 Project / Project Facilities.

6. Cost and expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-M, shall be met in accordance with Article-24.

Annex-I
(Schedule-M)

Safety Guidelines

1 Safe Movement

In the design, construction and operation of project / Project Facilities, particular care shall be taken to ensure safety of Users at all times. This shall include facilities for safe and efficient evacuation in case of emergency.

2 System Integrity

In the design of power supply, lighting, sound, communication and security equipments, particular care shall be taken to minimize the likely incidence of failure.

3. 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, 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.

4 Safety Equipment

The following equipment shall be provided at the Project Facilities:

- (a) Fire extinguishers and fire alarms at the appropriate locations;
- (b) such other equipment as may be required in conformity with Good Industry Practice.
- (c) Public Address System
- (d) CCTV Camera's adequately covering the Project
- (e) Metal Detectors and Screening Facility at the Entrance of the Project / Project Facilities

5 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 COD1 and COD2, respectively.

6 Fire safety

- 6.1 The Concessionaire shall conform to the standards specified in the US National Fire Protection Association (NFPA) for the CMDO, in addition to the other applicable fire safety norms applicable as per provisions of the Fire and safety as per specifications and standard
- 6.2 The Concessionaire shall use fire resistant materials in the construction of the CMDO thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 6.3 Emergency exit from the Project Facilities 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 in case of emergency.

- 6.4 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 6.4, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform and standardised.

7 User safety and information system:

- 7.1 The Concessionaire shall provide one way communication to Users through a Public Announcement (PA) system in case of emergency.

- 7.2 The User information system shall comprise dynamic visual displays and loudspeakers

Schedule – N
MONTHLY STATEMENTS

Schedule – O
(see clause 26.1)
FOOTFALL STATISTICS

1. Footfall Sampling

The Authority may, in its discretion and at its own cost, undertake footfall sampling at any or all of the Project Facilities, pursuant to clause 26.1, in order to determine the actual footfalls, at the Project / Project Facilities. Such sampling shall be undertaken through the Independent Engineer in the manner as the Parties hereto may agree upon.

Schedule – P
(NOT USED)

Schedule – Q
(see clause 28.1)
SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

- 1.1 The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance, GOI vide OM 24(23)/PF-II/2008 dated May 21, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Engineer. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Engineer hereunder.
- 1.2 In the event of termination of an Independent Engineer appointed in accordance with the provisions of Paragraph 1.1, the Authority shall appoint another firm of Technical Consultants forthwith or may engage a government-owned entity in accordance with the provisions of Paragraph 5 of this Schedule-Q.

2 Terms of Reference

The Terms of Reference for the Independent Engineer shall substantially conform with Schedule-R.

3 Fee and expenses

- 3.1 Indetermining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority 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, including Equity Support, if any. Payments not exceeding such [1% (one per cent)] shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority 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 Authority and the Concessionaire.

4 Selection every five years

No later than 5 (five) years from the date of appointment of Independent Engineer pursuant to provisions of Paragraph 1 of this Schedule-Q, and every 5 (five) years

thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this Schedule-Q.

5 Appointment of government entity as Independent Engineer

Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government of Karnataka shall not be eligible for appointment as Independent Engineer.

Schedule – R
(see clause 28.2.1)
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 Authority and (the "**Concessionaire**") for the development of the Project on design, finance, build, operate and transfer (DFBOT) 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 Project.

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:
- (a) review of the DPR, Implementation Report, Drawings and Documents as set forth in Paragraph 4;
 - (b) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - (c) conducting Tests on completion of construction and issuing Completion / Provisional Certificate as set forth in Paragraph 5;
 - (d) review, inspection and monitoring of O&M as set forth in Paragraph 6;
 - (e) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;
 - (f) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - (g) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - (h) assisting the Parties in resolution of disputes as set forth in Paragraph 9;
 - (i) Undertake safety audit for the Project in the development as well as Operations

phase as per the provisions of this Agreement and as specified in Annexure-I & Annexure-II of this Schedule -T

- (j) undertaking all other duties and functions in accordance with the Agreement.
- 3.2 The role and functions of the Independent Engineer shall include the development of any Other Permissible Project Facilities.
- 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. The Independent Engineer shall complete such review and send its comments/observations to the Authority 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 in accordance of Schedule-M and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also prepare a Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.
- 4.4 The Independent Engineer shall review the detailed design, construction methodology, safety and 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 Upon reference by the Authority, the Independent Engineer shall review and comment on the construction, operation and maintenance of the Project, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 5 Construction Period**
- 5.1 In respect of the Drawings, Documents 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 Authority and the Concessionaire

within 7 (seven) days of receipt of such report.

- 5.3 The Independent Engineer shall inspect the Construction Works 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 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. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.4 The Independent Engineer may inspect the Project 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 relevant Manuals specified by the Authority in relation to structures, buildings and equipment (the “**Quality Control Manuals**”) or any modifications / 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 Scheduled Completion Dates, 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 Project 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 Authority 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 Authority 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 Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.
- 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 Authority 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 Authority, 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 Authority 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 Authority 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 Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 6.4 The Independent Engineer shall inspect the Project, 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 Project. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 6.5 The Independent Engineer may inspect the Project 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 Project 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, 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 Authority for such delay.
- 6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of the Project / Project Facilities for undertaking maintenance / repair thereof, keeping in view the need to minimize disruption in operations of the Project / Project Facilities 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 section of the Project / Project Facilities, and in case of delay, determine the Damages payable by the Concessionaire to the Authority 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 25.5.
- 6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Project, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.
- 6.12 **Audit of Fee collection system**
The Independent Engineer shall, at least once every month, conduct an audit of the working of the automated & centralized Fee collection system installed by the Concessionaire, to check its accuracy in recording the Fee.
- 6.13 The Independent Engineer shall undertake footfall sampling, as and when required by the Authority, under and in accordance with Article-26.

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 Project / Project Facilities for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 43.1 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 Project / Project Facilities is such that its repair and rectification would require a larger amount than the sum set forth in Clause 44.2, it shall recommend retention of the required amount and the period of retention thereof.
- 7.2 The Independent Engineer shall inspect the Project once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 44, 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 Authority 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 Authority 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 Authority 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 Authority 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 Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in their editable digital format or in such other medium as may be acceptable to the Authority.

- 11.6 Wherever no period has been specified for delivery of services by the Independent Engineer, the Independent Engineer shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

Schedule – S
(NOT USED)

Schedule – T
ESCROW AGREEMENT

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

AMONGST

1. Limited, a company incorporated under the provisions of Companies Act, 2013 and having its registered Office at (hereinafter referred to as the **“Concessionaire”** which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. The GOVERNOR OF KARNATAKA, represented by _____ and having its principal office at _____ (hereinafter referred to as the **“AUTHORITY”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);
3. (insert names and particulars of Lenders Representatives) and having its registered Office at Acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the **“Lender’s Representative”** which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
4. (insert name and particulars of the Escrow Bank) and having its Registered Office at (hereinafter referred to as the **“Escrow Bank”** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns).

WHEREAS:

- (A) The Authority has entered into a Concession Agreement dated with the Concessionaire (the **“Concession Agreement”**) for the Project at Bengaluru in the State of Karnataka on design, finance, build, operate and transfer (the **“DFBOT”**) 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 forgoing 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 provisions of this Agreement by the Concessionaire, and shall commence from the date of which a notice is delivered by the Authority or the Lender’s 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;

“Lender’s Representative” means the person referred to as the Lender’s 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 Reference to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean reference to the Lender’s 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 Reference to Clauses are, unless stated otherwise, reference 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 Authority, the Lender's Representative and the Concessionaire in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Concessionaire hereby declares that all rights, title and interests in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lender's Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lender's 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 Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lender's 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 Lender's Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank's Fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lender's Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lender's 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 or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) All monies received in relation to the Project from Banks, insurance companies, the Authority or its representatives, other lenders, Statutory bodies or any other private or government agencies and Shareholders ;
- (b) All Fee and any other revenue from or in respect of the Project / Project Facilities, including all proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (c) All payments by the Authority, after deduction of any outstanding Concession Fee; and

Provided that the Senior Lenders may make direct disbursements to the EPC Contractors / Equipment suppliers, etc in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Grant and any other monies disbursed by the Authority to the Concessionaire;
- (b) All fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any 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 Lender's 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(s) / Equipment suppliers, etc under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

Interest on Deposits

The Escrow Bank agrees and undertakes that all interests 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 Lender's Representatives 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 Dates(s):

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

- (c) O&M Expenses, subject to the ceiling set by the Independent Engineer if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession Agreement, and certified by the Authority as due and payable to it;
- (e) Concession Fee / Additional Concession Fee due and payable to the Authority;
- (f) Monthly proportionate provisions of debt service payments due in an Accounting Year;
- (g) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (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 Lender's 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 Lender's 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 outstanding to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project / Project Facilities;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) Outstanding Concession Fee;
- (d) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (e) Retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 44 of the Concession Agreement;
- (f) Outstanding Debt Service including the balance 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 Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repairs, reconstruction, reinstatement, replacement or improvement of the Project / Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article-41 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of Funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Escrow Bank.

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lender's Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lender's Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

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 Lender's 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 Lender's Representative in connection herewith.

5.3 No set off

The Escrow Bank agrees not to claim or exercise any rights 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.

5.4 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lender's 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 consequence 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 Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lender's Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lender's Representative and arrangements are made satisfactory to the Lender's 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 Lender's 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 Lender's 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 Authority, Escrow Bank and the Senior Lenders, acting through the Lender's Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfill any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill 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 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 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 place of arbitration shall be Bangalore and the language of arbitration shall be English.

11. MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any 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 authorized representatives of the Parties.

11.5 Waivers

11.5.1 Waiver by any Party of its default by another Party in the observance and performance of any provisions of or obligations under this Agreement:

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

11.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligations 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 provisions 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 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 authorized representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.13 Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the 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 SENIOR LENDERS by the Lender's Representative:
---	--

(Signature)
(Name)

(Signature)
(Name)

(Designation)
(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.

(Designation)
(Address)
(Fax No.)
(e-mail address)

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

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

2.

Schedule – U
(see Clause 38.2.1)
PANEL OF CHARTERED ACCOUNTANTS

2. Panel of Chartered Accountants

Pursuant to the provisions of Clause 38.2.1 of the Agreement, the Authority 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-U.

3. Invitation for empanelment

2.1 The Authority shall invite offers from all reputed firms of Chartered Accountants who fulfill 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 including any re-enactment or amendment thereof, 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 10 (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 Authority;
- (d) the firm should have an office in Bangalore with at least 2 (two) practicing Chartered Accountants on its rolls in such office.

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 of Rs.25,00,00,000 (Rs. Twenty five crores) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

4. Evaluation and selection

4.1 The information furnished by each firm shall be scrutinized and evaluated by the Authority 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 and by way of illustration, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).

4.2 The Authority 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.

5. Consultation with the Concessionaire

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinize the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall sent its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

6. Mutually agreed panel

- 5.1 The Authority 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 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-U.

5.3

Schedule – V
(see Clause 43.4)
VESTING CERTIFICATE

1. The **Governor of**represented by (the “**Authority**”) refers to the Concession Agreement dated _____, 2016 (the “**Agreement**”) entered into between the **Authority** and _____ (the “**Concessionaire**”) for the Project at Bengaluru in the State of Karnataka on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis.
2. The Authority, hereby acknowledges compliance and fulfillment by the Concessionaire of the Divestment Requirements set forth in clause 43.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any Encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the transfer requirements and/or relieving the Concessionaire in any manner of the same.

Signed this *** day of ***, 20.... at _____.

AGREED, ACCEPTED AND SIGNED
For and on behalf of
Concessionaire by:

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

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

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

In the presence of:

1. 2.

Schedule – W
(see Clause 45.3.1)
SUBSTITUTION AGREEMENT

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

AMONGST

- 1 The GOVERNOR OF....., represented by _____ and having its principal office at _____(hereinafter referred to as the **"AUTHORITY"** which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);
- 2 [..... Limited], a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at (hereinafter referred to as the **"Concessionaire"** which expression shall unless repugnant to the context or meaning thereof include its successors and permitted assigns and substitutes);
- 3 (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 Authority has entered into a Concession Agreement dated with the Concessionaire (the **"Concession Agreement"**) for development of _____, on design, finance, build operate and transfer basis (DFBOT), 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 Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

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

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956 including any re-enactment or amendment thereof, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of 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 Authority 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 Lender's Representative shall not be entitled to operate and maintain the Project / Project Facilities as Concessionaire either individually or collectively.

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders' Representative may issue a notice to the Concessionaire (the "**Notice of Financial Default**") along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders' Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the AUTHORITY to suspend all the rights of the Concessionaire

and undertake the operation and maintenance of the Project in accordance with the provisions of Article _ of the Concession Agreement, and upon receipt of such notice, the AUTHORITY shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the AUTHORITY may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the AUTHORITY may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the AUTHORITY expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3 Substitution upon occurrence of Concessionaire Default

3.3.1 Upon occurrence of a Concessionaire Default, the AUTHORITY shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating the intention to substitute the Concessionaire by a Nominated Company.

3.3.2 In the event that the Lenders' Representative makes a representation to the AUTHORITY within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the AUTHORITY shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days; provided that upon written request from the Lenders' Representative and the Concessionaire, the AUTHORITY shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. Provided further that the Lender's Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Concessionaire may terminate this Agreement in accordance with the provisions hereof.

3.4 Procedure for substitution

3.4.1 The AUTHORITY and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the AUTHORITY under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the AUTHORITY under the Concession Agreement and towards the 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 fulfill the eligibility criteria that were laid down by the AUTHORITY for shortlisting the bidders for award of the Concession; provided that the Lenders' Representative may represent to the AUTHORITY that all or any of such criteria may be waived in the interest of the Project, and if the AUTHORITY determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.
- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the AUTHORITY to:
- (a) accede to transfer to the Nominated Company the right to construct, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - (c) enter into a with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the AUTHORITY has any objection to the transfer of Concession in 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 AUTHORITY, the Nominated Company shall be deemed to have been accepted. The AUTHORITY 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 AUTHORITY, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.5 Selection to be binding**
- The decision of the AUTHORITY in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the 'actions of the Lenders' Representative or the Senior Lenders or the AUTHORITY taken pursuant to this Agreement including the transfer/assignment of

the Concession in 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 AUTHORITY and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the AUTHORITY or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

4 PROJECT AGREEMENTS

4.1 Substitution of Nominated Company in Project Agreements

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the Concession Agreement.

5 TERMINATION OF CONCESSION AGREEMENT

5.1 Termination upon occurrence of Financial Default

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the AUTHORITY to terminate the Concession Agreement forthwith, and upon receipt of such notice, the AUTHORITY shall undertake Termination under and in accordance with the provisions of Article-42 of the Concession Agreement.

5.2 Termination when no Nominated Company is selected

In the event that no Nominated Company acceptable to the AUTHORITY is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the AUTHORITY may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

5.3 Realization of Debt Due

The AUTHORITY and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For 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, or 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 AUTHORITY and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.
- 7.1.2 The AUTHORITY will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the AUTHORITY to fulfill any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the AUTHORITY, its officers, servants and agents.
- 7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfill its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “**Indemnifying Party**”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to arbitration to a Board of Arbitrators comprising one nominee each of the AUTHORITY, Concessionaire and the

Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the 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 Bangalore 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 Bangalore shall have jurisdiction over all matters arising out of or relating to this Agreement.

9.2 Waiver of sovereign immunity

The AUTHORITY unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the AUTHORITY with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any 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 CONCESSIONAIRE has SIGNED, SEALED AND DELIVERED For and on been affixed pursuant to the resolution passed behalf of by the Board of Directors of the Concessionaire THE AUTHORITY by : at its meeting held on the day of 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 ^{\$} :	
(Signature)	(Signature)
(Name)	(Name)
(Designation)	(Designation)
(Address)	(Address)
(Fax)	(Fax)
(e-mail address)	(e-mail address)

SIGNED, SEALED AND DELIVERED For and on
behalf of
SENIOR LENDERS by
the Lenders' Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1.	2.
----	----

^{\$}To be affixed in accordance with the articles of association of the Concessionaire.

Schedule – X
(see Clause 5.4.1)
SHAREHOLDERS' AGREEMENT

SHAREHOLDERS' AGREEMENT

THIS SHAREHOLDERS' AGREEMENT (the “**Agreement**”) is made on this the day of
....., 20.....

AMONGST

1. The **Parties listed in Annex-I hereto** (hereinafter individually referred to as “**Private Participant**” and collectively referred to as “**Private Participants**”)(which expression shall, unless it be repugnant or contrary to the subject or context thereof, be deemed to mean and include their respective legal representatives and successors) of the **Second Part**;

and

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

The Private Participants and the Concessionaire are hereinafter collectively referred to as the “**Parties**” and individually as “**Party**”. The Private Participants are collectively referred to as the “**Shareholders**”.

WHEREAS:

- A. The Government of Karnataka (hereinafter referred to as the “**GoK**” or “**Government**”) has decided to develop the proposed Bengaluru International Convention Centre (hereinafter referred to as “**BICC**”) comprising of a main Convention Hall of minimum 6000 seating capacity, exhibition halls and Food Court along with other facilities / Project Components and related infrastructure in an integrated manner including Hotel(s), Retail, etc, on the Public Private Partnership (hereinafter referred to as “**PPP**”) model (hereinafter referred to as the “**Project**” and more fully described in Article-2 of the Concession Agreement).

- B. The Karnataka State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as the “**Authority**” or “**KSIIDC**”) has been mandated by the Infrastructure Development Department, GoK to be its Nodal Agency and to undertake development of the Project **through** PPP model on Design, Build, Finance, Operate and Transfer (the “**DBFOT**”) basis
- C. The Authority invited proposals by its Request for Proposal No.dated (the “**Request for Proposal**” or “**RFP**”) for undertaking the Project, wherein it had prescribed the qualification criteria and had shortlisted certain bidders including, inter alia, the Selected Bidder comprising _____ and _____ (collectively the “**Consortium**”) with _____ as its lead member (the “**Lead Member**”).
- D. The Private Participants include the [Members of the] Selected Bidder, which had bid, and was/were thereafter short listed and eventually selected by Authority, pursuant to which the Authority issued the Letter of Award No. dated to incorporate the special purpose vehicle which would execute the Concession Agreement for undertaking the Project (the “**Concessionaire**”).
- E. The Selected Bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, 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.
- .
- F. The Private Participants 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, 2013 (to the extent notified by the Government of India and currently in force), and the Companies Act, 1956 to the extent not repealed and replaced by the notified provisions of the Companies Act, 2013 or any other statutory amendment or re-enactment substituting the said Companies Act;

“Concession Agreement” shall mean the Concession Agreement dated [*Mention Date*] entered into between the GoK, the Concessionaire and the Selected Bidder 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. each of the Concessionaire;

“Managing Director” means the whole time managing director of the Concessionaire;

“Private Participants” shall have the meaning ascribed to it in the preamble of this Agreement;

“Private Participants Agreement” shall have the meaning ascribed to the term in Clause 4.2.4 hereunder;

“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;

“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;

“ThirdParty” means any entity not a Party to this Agreement; and

“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 t, 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 , the RFP, 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 extraordinary 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 Participants 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 TRANSFER OF SHARES

3.1 Transfer restrictions

- 3.1.1 Any Shareholder may, subject to the provisions of this Agreement, and in compliance with 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-III (**“Deed of Adherence”**).
- 3.1.2 It is hereby expressly clarified that where a 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.

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.

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) Toprocure that (i) every person for the time being representing it in its capacity as a 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 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 Laws to remove any such inconsistencies. Further, the Parties also agree that the Private Participants may enter into any agreement amongst themselves to regulate their inter-se relationship as shareholders of the Concessionaire (**“Private Participants Agreement”**), provided that the provisions of such Private Participants Agreement shall not be contrary to or inconsistent with the provisions of this Agreement, or detrimental, in any way, to the interest of the Authority under this Agreement and/or the Concession Agreement and shall be permissible under Applicable Laws. For the avoidance of doubt, it is hereby expressly agreed between the Parties that in the event of a conflict or inconsistency between the Private Participants Agreement and this Agreement, the provisions of this Agreement shall take precedence.

- 4.2.5 The Private Participants 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:

Private Participants and Shareholders shall have the right to nominate the 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 the Private Participants, as Directors from time to time

5.3 Chairman

The Parties hereby undertake and agree that the Private Participants 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 Participants 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 cooperate 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 I (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 If 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 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 be as per Applicable Laws.

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.

5.13 Decisions

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.

5.14 Resolution by circulation

Subject to Applicable Laws and 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 The quorum for any Shareholders meetings or any adjournment thereof shall be as per Applicable Laws.

6.1.3 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 Each of the Private Participants hereby warrant and represent to and for the benefit of the Concessionaire and the other Private Participants 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 Each of the Private Participants and the Concessionaire hereby irrevocably undertake, warrant and represent that:

- (a) the rights vested in the Government under the Concession Agreement shall not be abridged, abrogated or in any manner affected by any act done or purported to be done by any of the Private Participants or the Concessionaire; and
- (b) any divestment of equity in the Concessionaire shall not in any manner affect the rights of the Government under the Concession Agreement and that the successors, assigns and substitutes of the Concessionaire shall be bound by such undertaking.

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-a-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 any of the Private Participants, the Authority may, in its discretion, require such Private Participant to transfer all, but not less than all, of the Equity Shares held by it to the Authority 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 Authority 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; or
- (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 in Bengaluru, India 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 High Court of Karnataka. 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 place of arbitration shall be Bengaluru, India 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 Participants 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 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 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 thereof 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 and/or any relevant Associate of such 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 Participants 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 Project.

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 CONCESSIONAIRE SIGNED, SEALED AND DELIVERED 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^{\$}:

(Signature)
(Designation)
(Fax)

(Name)
(Address)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of
[Private Participant] by:

For and on behalf of
[Private Participant] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1.

2.

^{\$}To be affixed in accordance with the articles of association of the Concessionaire.

Annex – I
(Schedule-X)

Private Participants

{Insert the Name of the Private Participants}

Annex – II
(Schedule-X)

DEED OF ADHERENCE

This **DEED OF ADHERENCE ("Deed")** is executed this day of, by [Mention Name] 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 " **Share holders' Agreement**") amongst the Authority, and the concessionaries, 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 incorporated in this Deed.

By

Name and Title: In the Presence of:

Witness 1.

2.