

RFP No. CWC CO-CD0COMM/16/2022-CoMM

Dated 28/10/2023



Development of the Warehousing Facility through PPP under DBFOT model at 08 locations across India

**ISSUED BY:
CENTRAL WAREHOUSING CORPORATION,
4/1, SIRI INSTITUTIONAL AREA, AUGUST KRANTI MARG
HAUZ KHAS, NEW DELHI – 110 016
DATED: 28/10/2023**

**Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model
at 08 locations across India**

CWC CO-NBPP/3/2023-New Business Project and Planning Division

Date: 28/10/2023

Notice Inviting Tender

Central Warehousing Corporation invites proposal through e- tendering single stage two bid bidding system from the interested Professionally Competent and financially sound parties for Design, Build, Finance, Operate, Manage, and Transfer the Warehouse Facility.

The duly filled E-Tender along with self-attested copies of Experience/Work done certificate, schedule of rates and **EMD of Rs. 8,00,000/- (Rupees Eight Lakhs only)** and **Bid Document Fee of Rs. 35,400/- (Rupees - Thirty-Five Thousand Four Hundred only)** be send online as per following schedule.

RFP No.	CWC CO-CD0COMM/16/2022-CoMM dated 28/10/2023
Name of work	Development of the Warehouse Facility through PPP under DBFOT model at 08locations across India
Estimated project Cost	As per clause 1. Project Details
Bid Document Fee	Non-refundable Processing fee payable to CWC for an amount of Rs. 35,400/- (Rupees Thirty-Five Thousand Four Hundred only) including GST @ 18%. The payment should be deposited through e-payment gateway of M/s ITI only
Earnest Money Deposit (EMD)	Rs. 8,00,000/- (Rupees Eight Lakh)
Last Date and Time for downloading of Documents	23:59 Hrs on 29.11.2023.
Last date & time of submission of the proposal online	Upto 15:00 Hrs on 30.11.2023
Date & time of opening of technical proposal online	30.11.2023 upto 1530 Hrs
Date & time of opening of financial proposal online	Will be intimated to the eligible bidders

The Interested Bidders, who wish to participate, may download the RFP documents from CWC website www.cewacor.nic.in or website www.cwceprocure.com or CPP Portal <http://eprocure.gov.in/epublish/app>

Scope of work and terms and condition has been enclosed with RFP which may be referred by the agency while quoting the rate.

GM (NBP&P)
Central Warehousing Corporation

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DISCLAIMER

Though adequate care has been taken in the preparation of this Request for Proposal document, CWC makes no representation or warranty as to the accuracy and / or completeness of the information and/or projections contained in this document or provided to any party by CWC or any other person. CWC shall have no liability for any statements, opinions, information and matters (expressed or implied) arising out of, contained in or derived from, or for any omission from this document or any other written or oral communications transmitted to or conceived/inferred by the party in relation to the assets and business of the facility, as the case may be.

The Bidder should satisfy themselves that the Document is complete in all respects. Intimation of discrepancy, if any, should be given to the below mentioned office immediately. If no intimation is received by this office on or before **11.11.2023 up to 2359 Hrs**, it shall be deemed that the Bidder is satisfied that the Request for Proposal Document is complete in all respects and Bidder(s) have no queries or confusion related to any part or whole of the Tender Document.

CWC and the bidder shall have to comply with all provisions of law including the provisions of Central Warehousing Corporation Act, 1962 and its amendments thereafter along with all the other applicable regulations.

Central Warehousing Corporation reserves the right to reject any or all of the proposals submitted in response to this Request for Proposal or otherwise not to proceed with the bidding at any time without assigning any reasons whatsoever, at any stage of evaluation of bids and/or prior to award of the Contract/Agreement.

Central Warehousing Corporation also reserves the right to change any or all of the provisions of this Request for Proposal. Such changes would be intimated to all parties procuring this Request for Proposal and shall be posted on CWC's website <http://www.cewacor.nic.in>; on the CPP Portal eprocure.gov.in; and on the CWC's tender portal www.cwceprocure.com for the benefit of such tenderers who have downloaded the Tender from the website. It is informed that it is the sole responsibility of such bidders to check the website for such changes, if any, on the website with reference to this tender before submitting the Tender. If they fail to do so the CWC shall in no way be liable for the same. However, changes/ clarifications, if any, shall be posted on the website latest by two days prior to close of downloading of the Tender.

INSTRUCTIONS FOR ONLINE BID SUBMISSION/ E-TENDERING PROCEDURE/ GUIDELINES

1. CENTRAL WAREHOUSING CORPORATION, a Government of India Undertaking represented by Managing Director, Central Warehousing Corporation having its Corporate Office at 4/1, Siri Institutional Area, August Kranti Marg, New Delhi -110016 (herein after referred to as "CWC")
2. The complete RFP document can be viewed from website www.cewacor.nic.in The RFP can be viewed and downloaded only from the website www.cewacor.nic.in The intending bidders should submit their proposal with requisite document online at the time of submission of their proposal.
3. Submission **of Bids:** All bidders have to submit bids through online mode only as per following details and no bids in physical format will be entertained.
 - a. This document has been floated on following portal: www.cwceprocure.com, www.cewacor.nic.in and www.eprocure.gov.in
 - b. All the bidders are requested to get themselves registered well in advance and no extra time will be considered for the delay in online vendor registration for any reason whatsoever. In case, bidders wait till the last moment for uploading tenders/bid, and if any technical problem is encountered at that time, the bid submission time may elapse. In any event, for any reason whatsoever, in case the bid is not submitted within the bid submission time, CWC shall not be responsible, in any manner whatsoever, for such failure and such unsuccessful attempts shall be treated as non-participation in the tender without permissibility to contest the same or to seek a refund of processing fee, if deposited.
 - c. If any bidder wishes to participate in CWC tender, bidder has to register their firm through our website www.cwceprocure.com for online e-tendering in consultation with our service provider M/s ITI.
 - d. The bidder shall require class III digital signature/digital security certificate for participating in CWC e-tendering process (including, for log in, downloading and uploading of bid documents or for submitting the e-bid documents). Digital signature can be obtained from any of the authorized agency of CCA (Controller of Certifying authorities) for which, a separate processing fee would be payable to the authorized agency of CCA, directly. However, if valid class III digital signature is already available with the Bidder, the same can be used for CWC tender.
 - e. The person authorized to participate in the bidding on behalf of the Bidder i.e., authorized signatory, can submit the bid only under the digital signature issued to him, and not under the digital signature of any other person / entity. Any non-compliance with this stipulation will lead to summarily rejection of the bid. **Bidder shall submit their offer in electronic format on the website www.cwceprocure.com** , on or before the scheduled date and time as mentioned above. No bid in physical form will be accepted and any such offer, if received by CWC, will be outrightly rejected.
 - f. For any clarification regarding online participation, contact:
 - i. M/s Indian Telephonic Industries Limited, Unit No.202-203, 2nd, Floor, H.B. Twin Tower, Tower-I, Netaji Subhash Place, Pitampura, New Delhi-110008
 - ii. For assistance in online-tendering, bidder may call following helpline numbers: 080-45811365/080-45982100/9870393812.

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4. All the documents uploaded in the website to be serially page numbered in the sequence to the documents sought criteria so that the same can be linked properly.
5. To participate in the online-RFP, it is mandatory for the bidder to submit all desired documents within stipulated time period. All the documents uploaded in the website to be serially page numbered in the sequence to the documents sought criteria so that the same can be linked properly.
6. Complete RFP documents, duly accompanied with NECESSARY DOCUMENTS shall be submitted as per the date & time mentioned above. RFP shall be opened ON STIPULATED DATE as mentioned in the RFP in presence of bidders or their authorized representative who may wish to be present.
7. Any downloading from the website is at the sole risk & responsibility of the user.
8. Corrigendum/Addendum to this quotation, if any, will be published on website www.cewacor.nic.in Newspaper Press advertisement shall not be issued for the same.
9. The offer rate shall be valid for **180 days** from the date of opening of RFP.
10. CWC reserves the right to reject any or all the bids without assigning any reason therefor.
11. CWC reserve the right to scrap the complete RFP process any time without assigning any reason thereof.
12. Letter regarding clarification/missing documents will be issued to concerned bidders. In response, the bidder needs to submit the clarification/ missing documents (if any) through on the same portal through which original bid was submitted. Response received after the stipulated date & time mentioned in the clarification letter may not be accepted.
13. **Disqualification Conditions:**
 - i. Tenderers who have been blacklisted or otherwise debarred by CWC, FCI or any department of Central or State Government or any other Public Sector Undertaking as on last date of submission will be ineligible during the period of such blacklisting.
 - ii. Tenderers contract should not have been terminated for Tenderer's default by CWC during the last five years as on last date of submission of bid. In addition, the tenderer shall also not be eligible to participate in any future tender in case of any pending/outgoing legal dispute with CWC whether before any Court of law and/or arbitration with regard to any contract on last date of submission of bid and/or in case any recoveries/dues are outstanding on part of the tenderer payable to CWC.
 - iii. If the proprietor / any of the partners of the tenderer firm / any of the Director of the Tenderer company have been, at any time, convicted by a court for an offence and sentenced to imprisonment for a period of three years rigorous imprisonment or more, such tenderer will be ineligible. However, if on acquittal by the appellate court the tenderer will be eligible.
 - iv. While considering ineligibility arising out of any of the above clauses, incurring of any such disqualification in any capacity whatsoever (even as a proprietor, partner in another firm, or as Director of a Company etc.) will render the tenderer disqualified.
 - v. Bidder must upload scanned copies of all the requisite documents in support of their eligibility of bid. In the event of any document found fabricated / forged / tampered /altered / manipulated during verification, then the EMD of the bidder shall be liable to be forfeited and he / they himself themselves would disqualify for future participation in the tenders of Central Warehousing Corporation works for the next 05 (Five) years.
 - vi. A Hindu Undivided Family (either as a proprietor or partner of a firm) shall not be entitled to apply for tender. Any tender submitted in the capacity of Hindu Undivided Family (either as a proprietor or partner of a firm) shall be summarily rejected.
 - vii. Tenderer/ Bidder who is blacklisted by the GST authorities.

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DATA SHEET

S. N.	DESCRIPTION	
1.	Site Details	As per clause 1. Project Details
2.	Pre-Bid Conference	Through Video Conference on 17.10.2023 at 1500 hrs
3.	Last date of sending queries	11.11.2023 up to 2359 Hrs
4.	Name and Address where queries/correspondence concerning this Request for tender is to be sent.	General Manager (NBP&P) Central Warehousing Corporation 4/1, Siri Institutional Area, August Kranti Marg, Hauz Khas, New Delhi – 110 016 Email : gmnbpp@cewacor.nic.in
5.	CWC's response to the queries raised by the bidders	Response to all the queries shall be uploaded on www.cwceprocure.com
6.	Last date and time of Submission of Sealed tender (Tender Due Date)	30.11.2023 till 1500 hours
7.	Date of opening of tender	30.11.2023 till 1530 hours
8.	Address where Applicants must submit Tender	Online as per www.cwceprocure.com
9.	Bid Validity	180 days from date of opening of Bid
10.	Bid Document Fee	As per Clause 2.2, RFP Part I
11.	Earnest Money Deposit (EMD)	As per Clause 6.0, RFP Part I
12.	Technical Eligibility)	As per Clause 4.0, RFP Part I
13.	Financial Eligibility	As per Clause 5.0, RFP Part I
14.	Opening & Evaluation of the Technical Bids (Cover 1)	The Bidders may please note that the criteria under Clause 4 & 5 of RFP Part I, shall only be considered as the qualified bidder and the financial bids shall only be opened for qualified bidders only.
15.	Method of Selection tender (Bid Parameter)	Highest Financial Proposal The bidders are required to quote the Concession Fee in form of Minimum Guaranteed Revenue Share.
16.	Evaluation of Bids and Issuance of Letter of Award (LoA) (Clause 8.0, RFP Part I)	The bidder offering the highest Financial Bid Concession Fee, provided the Bid is responsive in terms of the INSTRUCTIONS TO BIDDERS and the Bid Forms [RFP Part - I], shall be declared as the Selected Bidder and the Corporation shall issue a Letter of Award (LoA) [as per the RFP Part -II] after opening of the Financial Bid.] The Selected Bidder shall incorporate a new Special Purpose Company (the "SPC") under the Indian Companies Act, 2013 for entering into the Concessionaire Agreement after

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S. N.	DESCRIPTION
	<p>issuance of LOA to the Selected Bidder, and for the SPC to perform all its obligations under Letter of Award (LoA), and the Concession Agreement.</p> <p>In the event that two or more Bidders quote the same amount of highest Concession Fee (the "Tie Bidders"), the Corporation shall ask the Tie Bidders to submit their revised Financial Bid with the amount of Concession Fee quoted earlier by the Tie Bidders as the Base Price for such Bid. The Bidder amongst the Tie Bidders, who quotes the highest Concession Fee in the revised Financial Bid, will be declared as the Successful Bidder and the Corporation shall issue a Letter of Award (LoA) to aforesaid successful bidder after opening of the revised Financial Bid.</p> <p>LoA shall be issued, in duplicate, to the Successful Bidder. The Successful Bidder shall, within 7 (seven) days of receipt of LoA, sign and return the duplicate copy of LoA in acknowledgement thereof. In the event, the duplicate copy of LoA duly signed by the Successful Bidder is not received by the stipulated date, CWC may, unless it consents to extension of time for submission thereof in writing, forfeit the Earnest Money Deposit (EMD).</p> <p>The Earnest Money Deposit (EMD) of the Successful Bidder shall be adjusted against the first annual offered concession fee. And EMD submitted for the unsuccessful bidder will be returned by CWC post the award of the LoA to the Successful Bidder.</p> <p>Notwithstanding anything contained in this RFP, in the event the first annual offered concession fee is not provided within the stipulated time i.e. before the date of signing of concessionaire agreement or within 45 days after issue of LOA, whichever is earlier, CWC at its sole discretion shall have the right to forfeit the Earnest Money Deposit (EMD) and take further appropriate actions as per terms of Bid Documents.</p> <p>Please take note that the LoA, does not grant or vests any ownership rights and/ or possession rights over the Site in favour of the Successful Bidder in any manner whatsoever, and CWC will continue to have complete ownership of the Site/Facility. However, the Corporation will hand over the Site to the Concessionaire on the appointed date as defined in the concessionaire agreement</p>

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S. N.	DESCRIPTION	
17.	<p>Performance Security</p>	<p>The Successful bidder shall submit the Performance Security within the time specified in the concessionaire agreement. The Performance Security shall be submitted in the form of Bank Guarantee.</p> <p>The successful bidder shall ensure that the Bank Guarantee issuing bank sends cover for Bank Guarantee (and/or confirmation about issuance of bank guarantee) issued through SFMS platform to the Corporation's Banker i.e. ICICI Bank, 9 Phelps Building, Connaught Place, New Delhi, (IFSC Code: ICIC0000007) as per details given below:</p> <ul style="list-style-type: none"> (i) MT760 COV for issuance of bank guarantee. (ii) MT767 COV for amendment of bank guarantee. (iii) Issuing bank shall mention Corporation beneficiary code i.e. CENTRALW27112020 in field 7037 of MT760 COV / MT767 COV. <p>The successful bidder shall submit the copy of SFMS message as sent by the issuing bank branch along with the original Bank Guarantee.</p> <p>Bank Guarantee submitted without these details shall not be accepted.</p>
18.	<p>Execution of Concession Agreement</p> <p>(Clause 9.0, RFP Part I)</p>	<p>The Concession Agreement [as per the RFP Part-III] will be signed by the Corporation with the SPC, within 45 days from the date of issue of LOA subject to payment of first annual concession fee by the SPC to the Corporation within this period of 45 days. The SPC will be referred to as the "Concessionaire" in the Concession Agreement.</p> <p>Please take note that the issuance of the Concession Agreement does not grants or vests any ownership rights and/ or possession rights over the Site in favour of the Concessionaire in any manner whatsoever, and CWC will continue to have complete ownership and possession of Site. However, the Corporation will hand over the Site to the Concessionaire on the appointed date as defined in the concessionaire agreement for the Concession Period of 45 years (Forty-Five) and subject to the provisions of the concessionaire agreement.</p>
19.	<p>Commercial Operation Date (COD)</p> <p>(Clause 9.0, RFP Part I)</p>	<p>Commercial Operation Date 1 (COD 1) shall be the commencement date of the commercial operation by the Concessionaire after successfully getting the handover of the Site for fulfilling the specified scopes and obligations mentioned in the Concession Agreement.</p>

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S. N.	DESCRIPTION	
		Commercial Operation Date 2 (COD 2) shall be the commencement date of commercial operation by the Concessionaire after the completion of construction of new Assets at the Site as specified in the Concession Agreement.
20.	Approvals and permits	It shall be the sole responsibility of the Concessionaire to procure all the applicable approvals and permits regarding the construction/redevelopment/upgradation of Assets as specified in the Concession Agreement at its own cost.

RFP PART - I

Instructions to Bidders and Bid Forms

INSTRUCTIONS TO BIDDERS (ITB) AND BID FORMS

1 Introduction:

Central Warehousing Corporation (CWC) is a statutory body which was established under 'The Warehousing Corporations Act, 1962' and its aim is to provide reliable, cost-effective, value-added, integrated warehousing and logistics solution in a socially responsible and environment friendly manner. It is a public warehouse operator established by the Government of India in 1957 to provide logistics support to the agricultural sector. It operates 459 warehouses across India with a storage capacity of 11million tonnes as of 31.12.2022. CWC also has 50% equity in 19 State Warehousing Corporations (SWCs).

Functions of Central Warehousing Corporationpermitted as per section 11 of the Warehousing Corporations Act, 1962 are hereunder:

- (a) acquire and build godowns and warehouses at such suitable places in India¹ or aboard asit thinks fit;
- (b) run warehouses for the storage of agricultural produce, seeds, manures, fertilizers,agricultural implements and notified commodities offered by individuals, co-operative societiesand other institutions;
- (c) arrange facilities for the transport of agricultural produce, seeds, manures, fertilizers,agricultural implements and notified commodities to and from warehouses;
- (d) subscribe to the share capital of a State Warehousing Corporation;
- (e) act as agent of the Government for the purposes of the purchase, sale, storage anddistribution of agricultural produce, seeds, manures, fertilizers, agricultural implements andnotified commodities;
- (ea) enter into, with the previous approval of the Central Government, joint ventures withany corporation established by or under any Central Act or any State Act or with any companyformed and registered under the Companies Act, 1956 including foreign company or through itssubsidiary companies, for carrying out the purposes of this Act.
Explanation.—For the purposes of this clause, the expression "foreign company" shall havethe meaning assigned to it under clause (23A) of section 2 of the Income-tax Act, 1961;
- (eb) establish subsidiary companies]; and
- (f) Carry out such other functions as may be prescribed.

Additional Functions of CWC as per chapter-IA of the Central warehouse Corporation, Rules 1963 (Rule-2A to 2 E) are as follows:

2. A. Disinfestation Service:

The Corporation may, at its discretion and at the request of the parties concerned, undertake disinfestation service outside its warehouses in respect of agricultural produce or notified commodities as defined in Section 2.

2.B. Service as Agent:

The Corporation may, at its discretion, act as agent for the purpose of purchase, sale, storage and distribution of agricultural produce, seeds, manures, fertilizers, agricultural implements and notified commodities as defined in section 2. on behalf of a Company as defined in the Companies Act, 1956

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(1 of 1956) or a body corporate established by an Act of Parliament or of a State Legislature or a Cooperative Society.

2.C. Consultancy Service:

The Corporation may, at the request of the Central Government or any State Government or a Corporation established by or under a Central Provincial or State Act or a Government Company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a Cooperative Society, prepare any project or render consultancy service for construction of Warehouses or any matter connected therewith.

2.D. Creation of Infrastructure Facilities

The Corporation may operate Warehouses, create Infrastructure, and arrange facilities for storage, handling and transport of agriculture produce, seeds, manures. fertilizers. agriculture implements, notified commodities, bonded cargo, air cargo, containerized cargo and liquid cargo. Further, the corporation may also provide marketing and other warehousing related services in respect of agriculture produce or notified commodities.

2.E. Undertaking Incidental Activities:

The Corporation may provide consultancy services. assistance. finance, programmes or projects related to agriculture produce or other notified commodities and undertake any other activities considered incidental to its functions.

Under the National Monetisation plan, the Central Warehousing Corporation (CWC) is planning to monetise and modernise the CWC warehouses throughout the country. As a part of this plan, CWC plans to monetise its assets through PPP mode under Design Build Finance Operate and Transfer (DBFOT) model for a period of 45 years to the Concessionaire as per the terms as mentioned in the Concessionaire Agreement. The Bidders are required to quote the Annual Concession Fee (Minimum Guarantee Revenue share amount). This Concession fee shall have upward revision of 15% every 3 years till the end of the Concession period of 45 years and during extension period if any.

CWC has floated an RFP for appointment of the concessionaire for development of facility located in 08 locations across India through PPP model under DBFOT mode. The project details and other required information is elaborated in further sections of this RFP.

1.0 Project Details

S. No.	Site Location	State	Region	Latitude, Longitude	Total Plot Area (acres)	Offered area (acres)	Estimated Project Cost (INR Cr)
1	Narela	Delhi	Delhi	28.82311N, 77.10479E	5.00	5.00	27.05
2	Vashi	Maharashtra	Mumbai	19° 4'44.11"N, 73° 0'50.69"E	25.20	7.48	56.26
3	Mannargudi	Tamil Nadu	Chennai	10.41197N, 79.26552E	60.75	15.57	46.80
4	Padakakani	Andhra Pradesh	Hyderabad	16.33N, 80.48E	36.59	12.47	37.48
5	Rayanapadu	Andhra Pradesh	Hyderabad	16.57434N, 80.56453E	31.23	10.50	31.56

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S. No.	Site Location	State	Region	Latitude, Longitude	Total Plot Area (acres)	Offered area (acres)	Estimated Project Cost (INR Cr)
6	Shahganj	Uttar Pradesh	Lucknow	26.0718N, 82.6777E	29.15	9.00	32.46
7	Amritsar	Punjab	Chandigarh	31.6080N, 74.8681E	19.30	19.30	69.61
8	Pathankot	Punjab	Chandigarh	32.2651N, 75.6283E	44.54	7.73	43.47

Note:

Permissible FAR

*As per the applicable building regulation
As per available data of permitted by laws and for indicative purpose only.
Bidder must confirm the latest permissible ground coverage/FAR/FSI etc as per prevailing by laws. This area calculated after dismantling of existing structure if any over offered space.*

Permissible Building Height

As per the applicable building regulation

- 1.1** CWC invites bids from the interested eligible Bidders through Bid dated **28/10/2023** published in leading national and regional newspapers for the above Site.
- 1.2** Bid System: - Bidding process for the selection of the Bidder for the Project will be carried out through online **Single Stage (Two Bid) system** consisting of "Qualification Proposal" in the Cover 1 and "Financial Proposal" in the Cover 2. The Bidding shall be done through e-tendering mode only.
- 1.3** Bid Variable: - Highest Financial Proposal The bidders are required to quote the Concession Fee in form of Minimum Guaranteed Revenue Share. Bid Validity Period: 180 days from the date of opening of Bid.
- 1.4** The Site will be handed over to the Concessionaire on the Appointed date as defined under the Concession Agreement. The SPC formed by the Successful Bidder shall have to sign the Concession Agreement within 45 days from the date of LOA. The Concessionaire shall be liable to perform all the obligations and fulfil the scope of the Concession Agreement to enjoy the permitted right over the Site for the Concession Period of 45 (Forty-Five) years, as per the terms as mentioned in the Concessionaire Agreement.

2 Bid Documents:

2.1 The following documents collectively form the Bid Document: -

- (i) Request for Proposal
- (ii) Instructions to Bidders and Bid Form-1 to 12, & Schedule I & II [RFP Part I]
- (iii) Draft Letter of Award [RFP Part II]
- (iv) Draft Concession Agreement [RFP Part III]

2.2 Bid Document Fee.

2.2.1 Bid document Fee of Rs.35,400/- (Rupees Thirty-Five Thousand and Four Hundred only) including GST to be paid by the bidder before submission of the Bid.

2.3 Schedule of e-bidding Process

The important dates for the Bidding Process are as following, subject to changes, if any, which will be advised through addendums/amendments.

S.No	Event Description	Date(s)
1.	Commencement of Downloading Bid Document	28/10/2023
3.	Last date of receiving pre-bid queries	11/11/2023 at 2359 HRS.
3.	Pre-Bid Meeting	10/10/2023 at 1500 HRS through VC
5.	Last date of downloading of e-Bid Document	Upto 23:59 Hrs on 29.11.2023
6.	Last date of submission of e-Bid (the "Bid Submission Date")	Upto 15:00 Hrs on 30.11.2023.
7.	Last date for submission of Earnest Money Deposit (EMD) Payment, and other Bid Forms	Upto 15:00 Hrs on 30.11.2023.
8.	Opening of Bids – Technical Proposal	30.11.2023 at 15:30 HRS.
9.	Opening of Bids – Cover -2 (Financial Proposal)	To be intimated later
10.	For Site visit , interested Bidders may contact: Contact Details 1. Mr. Anit Yadav, Manager (NBP&P), CWC CO New Delhi : Mob No. 90577 99000	

2.4 Addresses for Communication:

2.4.1 All notices related to this e-Bid including Clarifications/Amendments/Addendums relating to the e-Bid document shall be available on the website

2.4.2 Interested Bidders may obtain further information from:

A. For Tender related information:

- i. Mr. Manish Singh Rana
 Asst. General Manager (NBP&P)
 Central Warehousing Corporation
 PH : +919990927937
 Email: msrana14@cewacor.nic.in

2.4.3 The address for all communications shall be:

General Manager (NBP&P)
 Central Warehousing Corporation
 4/1, Siri Institutional Area, August Kranti Marg,
 Hauz Khas, New Delhi – 110 016
 Email : gmbpp@cewacor.nic.in

3 Bid Submission and Opening:

The Bidders shall submit their e-bids in the following manner: -

- 3.1 Qualification Bid – In Electronic form (**Cover -1 Technical Bid**) shall contain the following documents duly filled in:
 - (i) Duly filled up and digitally signed 'Checklist of documents as per format';
 - (ii) Duly digitally signed 'Instructions to Bidders';
 - (iii) Duly filled up and digitally signed/executed Bid Forms 1 to 12, (whichever applicable)
 - (iv) Duly signed documents required on Constituents and shareholders to establish that the Bidder does not have a conflict of interest.
 - (v) Bid Document Fee (Payment acknowledgement receipt shall be submitted as part of Cover-1)
 - (vi) Earnest Money Deposit (EMD);(Payment acknowledgement receipt shall be submitted as part of Cover-1)
 - (vii) Duly digitally signed Draft of Letter of Award, Concession Agreement [RFP Part-II & III].
 - (viii) No information related to the Financial Proposal (Cover 2) shall be added in Technical Proposal (Cover 1), if found so shall led to disqualification of the bidder.
- 3.2 **Financial Proposal - (Cover-2)** of the Bid shall contain only the Financial Proposal in the Bid Form 12. This shall be submitted on-line only and no hard copy has to be submitted.
- 3.3 Cover -1 and Cover -2 should be submitted online in digital format.
- 3.4 E-Bids shall be submitted online on or before the e-Bid Submission Date and time given in the Schedule of e-Bidding Process.
- 3.5 **Bids/Eligibility Proposals (Cover-1)** will be opened on **30/11/2023 at 1530 HRS** as scheduled in Para-2.3 of ITB. The Financial Bids (Cover-2) of only those Bidders who are found to be eligible as per their Qualification Bid shall be opened at a subsequent date after evaluation of Qualification Bid. The date of opening of Financial Bids will be decided by the Corporation and communicated to all the eligible Bidders either through e-mail or on the website.

4 Technical Eligibility

- 4.1. For demonstrating technical capacity and experience (the "Technical Capacity"), the Bidder shall, at any time in the 5 (five) financial years immediately preceding the Bid Opening Date, by itself or through its Associate entities, should have satisfactorily completed or is operating or maintaining the works as mentioned below:
 - a) One similar completed work having Project cost not less than 80% of the total estimated project cost as per the data sheet **or**
 - b) Two similar completed works, each having Project cost not less than 60% of the total estimated project cost as per the data sheet **or**

- c) Three similar completed works, each having Project Cost not less than 40% of the total estimated project cost as per the data sheet.

Similar Works shall be deemed to include, ports, airports, railways, metro rail, industrial parks/ estates, logistic parks, real estate development and core sector projects. Real estate development shall not include residential flats. Core Sector Projects includes Coal, Crude Oil, Natural Gas, Refinery Products, Fertilizers, Steel, Cement and Electricity.

- 4.2. The Bidders are required to submit the project details as per Bid Form 3.

5 Financial Eligibility

- 5.1 The Financial Eligibility required to be met by the Bidder is:

Net Worth of the Bidder should not be less than 50% of the **cumulative Estimated Project Cost of all the sites** that the bidder is bidding for during the close of the previous Financial Year.

In case the Applicant is an AIF or Foreign Investment Fund, it should have a minimum ACI at the close of the preceding financial year of two times the cumulative Estimated Project Cost of all the sites that the bidder is bidding for. A company (whether incorporated in India or other jurisdictions) in which the entire capital (whether directly or indirectly) is invested by an AIF/ FIF will be deemed to be an AIF/ FIF for the purposes of this RFP.

- 5.2 The Bidder shall be required to submit the Bid Form-4 duly certified by the Statutory Auditor/ Chartered Accountant, based on the audited annual financial statements/income tax returns. (For clarity refer Bid Form-4 of this RFP):

- (a) The term "Net worth" shall have the following meaning:

"Net Worth" shall mean (Subscribed and Paid-up Equity Capital (not to include any Share Application Money/Preference Share Capital) including Equity/Security Premium+ General Reserves Less (Revaluation Reserves + Accumulated Losses + Miscellaneous Expenditure not written off + Accrued Liabilities not accounted for + Intangible Assets).

- 5.3 In case Members of a Consortium are aggregating their individual experiences to qualify, the above information must be provided separately for each Member as per the specified format signed by the respective statutory auditors/ chartered accountants.

- 5.4 For those Individual / Proprietor whose accounts are not required to be audited as per the law "Statutory Auditor" will be replaced with Chartered Accountant.

- 5.5 For the purpose of this RFP, the following terms shall have the meaning hereinafter respectively assigned to them:

(i) "**AIF**" shall have the meaning as ascribed to the term '**Alternative Investment Fund**' under Regulation 2(1)(b) of the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012 (as amended); and

(ii) "**Foreign Investment Fund**" shall mean any pooled investment vehicle or investment fund which is registered or recognized with a securities market/banking regulator/relevant

government authorities of a 'foreign jurisdiction'; and "foreign jurisdiction" means a country, other than India, whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (IOSCO's MMOU) (Appendix A signatories) or a signatory to bilateral Memorandum of Understanding with the Securities and Exchange Board of India, and which is not identified in the public statement of Financial Action Task Force as a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply or a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies.

(iii) "**ACI**" or "**Available Capital for Investment**" shall mean minimum investible funds (i.e. immediately available funds for investment and callable capital (including any undrawn capital commitments available with the AIF/FIF or its Associate Entities) subject to the limits of investment in a single investee entity (in the relevant jurisdiction for a Foreign Investment Fund, or the maximum permissible investment limit for an AIF) (as per the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012, as may be amended from time to time). In case of an AIF or Foreign Investment Fund using ACI, ACI would be considered as per the certificate issued by statutory auditor (or such other certificate as filed with the regulator in the relevant jurisdiction) not older than 1 (one) month prior to the date of Bid Submission;

Note: In computing the Technical Eligibility and Net Worth of the Bidder/ Consortium Members under Clauses 4.0 and 5.0, the Technical eligibility and Net Worth of their respective Associate Entity would also be eligible hereunder. For purposes of this RFP, Associate Entity means, in relation to the Bidder/ Consortium Member, a person who controls, is controlled by, or is under the common control with such Bidder/ Consortium Member (the "**Associate Entity**"). 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. It is clarified that a certificate from a qualified external auditor who audits the book of accounts of the Bidder or the Consortium Member shall be provided to demonstrate that a person is an Associate Entity of the Bidder or the Consortium as the case may be.

In relation to an AIF or Foreign Investment Fund, Associate Entity shall mean and include entities (including Indian companies, foreign companies and other AIFs/FIFs) which are under common control of a single investment manager (whether by operation of law, contract (whether directly or indirectly) or otherwise).

6. Earnest Money Deposit (EMD)

The amount of Earnest Money Deposit (EMD) for this RFP is Rs 8,00,000/- (Rupees Eight Lakh Only). EMD of Rs. 8,00,000/- is to be deposited irrespective of number of locations.

The Earnest Money Deposit (EMD) shall be submitted through online payment through e-tendering portal i.e. www.cwceprocure.com, www.cewacor.nic.in and www.eprocure.gov.in

7. Opening and Evaluation of Technical Bids

7.1. The CWC shall open the Technical Bids received online at 1530 hrs on **30.11.2023**. The CWC will subsequently examine and evaluate the Bids in accordance with the provisions set out in this Clause 7.

7.2. To facilitate evaluation of Bids, CWC may, at its sole discretion, seek clarifications/missing documents from any Bidder regarding its Bid.

7.3. Evaluation parameters

7.3.1. The Bidder's competence and capability is proposed to be established by the following parameters:

- a) Technical Capacity; and
- b) Financial Capacity

7.3.2 The Bidders who qualify the eligibility under clause 4 and 5 shall be invited for financial bid opening at the time specified in data sheet.

8. Evaluation of Financial Bids and Issuance of Letter of Award (LoA):

8.1. The revenue generated by the project will accrue to CWC through the CWC Escrow Account, as provided in the Concession Agreement. From the total revenue received in the CWC Escrow Account, CWC shall pay 95% of the Total Turnover (as defined herein) receipts to the Concessionaire as O&M Fee. The balance amount, subject to a Minimum Guarantee Revenue Share (amount as quoted by the Successful Bidder), shall be retained by CWC. The quoted Minimum Guaranteed Revenue Share amount shall have upward revision of 15% every 3 years till the end of the Concession Period and any extension thereto.

8.2. The bidder will be required to quote the Minimum Guarantee Revenue Share in Indian Rupees.

8.3. The Financial Bids will be ranked Site/ Location wise on the basis of the highest quoted Minimum Guarantee

8.4. Revenue Share @ 5% of the Total Turnover shall be retained by CWC and the rest shall be released to the concessionaire as per the terms defined in the concession agreement on quarterly basis.

8.5. In case the actual revenue share @5% on Total Turnover generated by the SPC in the specific Year is lower than the minimum guaranteed revenue share, the differential amount shall be retained by CWC along with the Revenue Share of the following quarter.

Note: " **Total Turnover**" shall mean the aggregate of all revenue earned from the operations or directly attributable to the project.

Explanation: For the removal of doubts, it is clarified that any amount charged by the concessionaire to the users in relation to the project, whether or not such revenue is actually realized from the users, shall form part of the Total Turnover.

Provided however that any income earned from the following activities shall be excluded from the computation of Total Turnover:

- i. income from investing surplus funds by the concessionaire;
- ii. income from any other investments not directly related to the project;

Provided also that notwithstanding anything contained in this Agreement the Total turnover shall not include taxes or charges collected by the concessionaire from the users of the services and paid or remitted to the authorities concerned.

Illustration:

Case 1.

- A. The Turnover received in the CWC Escrow Account for a particular year = Rs 100 Cr.
- B. Quoted Minimum Guaranteed = Rs. 3 Cr per annum
- C. Guaranteed Revenue Share to CWC @5% of Turnover receipts in the particular Financial Year = Rs. 5% * 100 Cr = Rs 5 Cr (5% of A)
- D. Portion of Turnover retained by CWC for the particular year will be = Rs 5 Cr , as the guaranteed revenue share @5% of Turnover receipts for the specific Financial Year is more than the Minimum Guarantee (B)
- E. Amount paid to the Concessionaire as O&M Fee for the particular financial year will be Rs 95 Cr. (i.e. A-C)

Case 2.

- A. The Turnover received in the CWC Escrow Account for a particular year = Rs 100 Cr.
- B. Quoted Minimum Guarantee = Rs. 6 Cr per annum
- C. Guaranteed Revenue Share @5% of Turnover receipts in the particular Financial Year = Rs. 5% * 100 Cr = Rs 5 Cr (5% of A)
- D. Portion of the Turnover retained by CWC for the particular year will be = Rs 6 Cr , as the guaranteed revenue share @5% of actual Turnover receipts for the particular Financial Year is less than the Minimum Guarantee
- E. Amount paid to the Concessionaire as O&M Fee for the particular financial year will be Rs 94 Cr. (i.e. A-B)

- 8.6. The Bidder offering the highest Financial Bid for the Site, provided the Bid is responsive and technically qualified as per clause 7.4 in terms of the ITB and the Bid Forms [RFP Part - I], shall be declared as the **Successful Bidder** for the Site and CWC shall issue a **Letter of Award (LoA)** to the successful bidder [as per the RFP Part -II] after opening of the Financial Bid.]
- 8.7. The Selected Bidder shall incorporate a new Special Purpose Company (the "SPC") under the Indian Companies Act, 2013 for entering into the Concessionaire Agreement after issuance of LOA to the Successful bidder, and for the SPC to perform all its obligations under Letter of Award (LoA and the Concession Agreement. shall incorporate a new Special Purpose Company (the "SPC") under the Indian Companies Act, 2013 for issuance of LoA to it, and for the SPC to perform all its obligations under Letter of Award (LoA), and the Concession Agreement.

- 8.8. In the event that two or more Bidders quote the same amount of highest Concession Fee (the **"Tie Bidders"**), the Corporation shall ask the Tie Bidders to submit their revised Financial Bid with the amount of Concession Fee quoted earlier by the Tie Bidders as the Reserve Price for such Bid. The Bidder amongst the Tie Bidders, who quotes the highest Concession Fee in the revised Financial Bid, will be declared as **the Successful Bidder** and the Corporation shall issue a **Letter of Award (LoA) to aforesaid successful bidder** after opening of the revised Financial Bid.
- 8.9. The Successful bidder shall submit the Performance Security within the time specified in the concessionaire agreement. The Performance Security shall be submitted in the form of Bank Guarantee.
- 8.10. LoA shall be issued, in duplicate, to the Successful Bidder. The Successful Bidder shall, within 7 (seven) days of receipt of LoA, sign and return the duplicate copy of LoA in acknowledgement thereof. In the event, the duplicate copy of LoA duly signed by the Successful Bidder is not received by the stipulated date, CWC may, unless it consents to extension of time for submission thereof in writing, forfeit the Earnest Money Deposit (EMD).
- 8.11. The Earnest Money Deposit (EMD) of the Successful Bidder shall be adjusted against the first annual concession fee.
- 8.12. Please take note that the LoA, does not grant or vests any ownership rights and/ or possession rights over the Site in favour of the Successful Bidder in any manner whatsoever, and CWC will continue to have complete ownership of the Site/Facility. However, the Corporation will hand over the Site to the Concessionaire on the appointed date as defined in the concession agreement, subject to the provisions of the Concession Agreement.

9. Execution of Concession Agreement:

- 9.1 The Concession Agreement [as per the RFP Part-III] will be signed by the Corporation with the SPC formed by the successful bidder, within 45 days from the date of issue of LOA subject to the submission of the performance guarantee as per the DCA. The SPC will be referred to as the "Concessionaire" in the Concession Agreement.
- 9.2 Please take note that the issuance of the Concession Agreement does not grants or vests any ownership rights and/ or possession rights over the Site in favour of the Concessionaire in any manner whatsoever, and CWC will continue to have complete ownership and possession of Site. However, the Corporation will hand over the Site to the Concessionaire on the appointed date as defined in the concession agreement for the Concession Period of 45 Years, subject to the provisions of the concession agreement.

10. Pre-Bid Meeting:

Pre-bid Meeting will be held via Video Conference. However, bidders may physically attend the meeting at following venue as per the following scheduled & venue at the address given below:

-

Date	Time	Venue
10.10.2023	1500 HRS	Through VC

11.CHECKLIST FOR QUALIFICATION BID

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

Requirement	Complied with (Yes / No)
The bid document is digitally signed by the authorized signatory/representative	
The Proposal and all related correspondence and documents in relation to the Bidding Process are in English Language.	
Supporting documents and printed literature furnished with the Proposal in any other language are accompanied by translations of all the pertinent passages in English language, duly authenticated and certified by the Bidder.	
I/We have read and made myself/our self well conversant with the provision/information contained in CWC's General Conditions of Letter of Award, Concession Agreement [RFP Part-II, III& IV];and we affirm to abide by the same.	

S. No.	Document / enclosure for submission	Submitted (Yes / No / Not Applicable)
1	Bid Document Fee of Rs 35,400/- (Indian Rupees Thirty-Five Thousand Four Hundred Only) to be paid online.	
2	EMD of as per clause 6 to be paid online	

S. No.	Document / enclosure for submission	Document Submitted (Yes/No/NA)	Page Nos (_ to _)	Total No of Pages
1.1	Scanned copy of RFP Part-I to Part III as issued by Central Warehousing Corporation for the Project, digitally signed on each page by the authorized signatory have been uploaded.			
1.2	Uploading of Scanned copy of Covering Letter as per the prescribed format in Bid Form-1; i) signed by authorized signatory ii) on the letterhead of the Bidder			

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S. No.	Document / enclosure for submission	Document Submitted (Yes/No/NA)	Page Nos (_ to _)	Total No of Pages
2(A)	Uploading of scanned copy of General Information about the sole Bidder/Lead Member as per the prescribed format in Bid Form 2; Evidence of incorporation			
2(B)	Uploading of scanned copy of General Information about Member-1 as per the prescribed format in Bid Form-2; Evidence of incorporation,			
2(C)	Uploading of scanned copy of General Information about Member-2 as per the prescribed format in Bid Form-2; Evidence of incorporation,			
2(D)	Uploading of scanned copy of General Information about Member-3 as per the prescribed format in Bid Form-2; Evidence of incorporation,			
3	Information for Technical Eligibility for sole Bidder/Member in case of Consortium certified by Statutory Auditor/CAs per the prescribed format in Bid Form-3;			
4	Information for Financial Eligibility for sole Bidder/Member in case of Consortium certified by Statutory Auditor/CAs per the prescribed format in Bid Form-4; (Separate forms for each Member in case of Consortium where Financial experience is aggregated). Audited annual financial reports/Income tax return along with financial statements duly certified by Statutory Auditor/Chartered Accountant of the Bidder or in case of a Consortium, of each Member, for last 3 (three) financial years.			
5	Uploading of scanned copy of Joint Bidding Agreement ('JBA') including the mandatory legal provisions as mentioned in Bid Form 4, in case of Bidder being a consortium, executed on non-judicial stamp paper of INR 100/- and duly			

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S. No.	Document / enclosure for submission	Document Submitted (Yes/No/NA)	Page Nos (_ to _)	Total No of Pages
	notarised .			
	Whether extract of the charter documents and documents such as Board resolution or equivalent document supporting formation of JBA has been submitted.	(Yes/No/Not Applicable)		
	JBA executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Agreement is being executed and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
6	Uploading of scanned copy of Earnest Money Deposit (EMD) payment instrument, if not paid online.			
7	Uploading of scanned copy of Power of Attorney (submitted by the Member/ Lead Member for signing of Bid) executed on non-judicial stamp paper of INR 100/- and duly notarized as per the prescribed format in Bid Form-6;			
	Whether extract of the charter documents and documents such as Board resolution or equivalent document supporting the authority of the person signing the Power of Attorney has been uploaded	(Yes/No/Not Applicable)		
	Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being executed and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
8	Uploading of scanned copy of Power of Attorney in favour of the Lead Member of Consortium executed on non-judicial stamp paper of INR 100/- and duly notarized as per the prescribed format in Bid Form-7;			
	Whether extract of the charter documents and documents such as Board resolution or equivalent document supporting the authority of the person signing the Power of Attorney has been submitted	(Yes/No/Not Applicable)		

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S. No.	Document / enclosure for submission	Document Submitted (Yes/No/NA)	Page Nos (_ to _)	Total No of Pages
	Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being executed and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
9	Uploading of scanned copy of Undertaking from Bidder/Member of Consortium for claiming experience from Associate Entity on non-judicial stamp paper of INR 100/- and duly notarized as per the prescribed format in Bid Form-8, if applicable;			
	Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being executed and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
9A	Uploading of scanned copy of Undertaking from Bidder/Member of Consortium for claiming experience of Partnership Firm on non-judicial stamp paper of INR 100/- and duly notarized as per the prescribed format in Bid Form-8A, if applicable;			
	Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being executed and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
10	Uploading of scanned copy of Statement of Legal Capacity as per the format prescribed at Bid Form-9..			

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S. No.	Document / enclosure for submission	Document Submitted (Yes/No/NA)	Page Nos (_ to _)	Total No of Pages
	Signed by Authorized Signatory	(Yes/No/Not Applicable)		
	On the letterhead of the Bidder	(Yes/No/Not Applicable)		
	Uploading of scanned Copy of Charter/Registration/Incorporation/Identity proof & PAN in case of Individuals.			
	UNDERTAKING executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the undertaking is being issued and then stamped in India as per the applicable State laws.	(Yes/No/Not Applicable)		
11	Uploading of scanned copy of Information on Conflict of Interest.			
12	Uploading of scanned copy of the Bid Form no 10: Affidavit for compliance to payment terms			
13	i) Uploading of scanned copy of Audited Annual financial Statement and IT Returns of the Bidder for the last 03 (Three) years.			
	ii) Uploading of scanned copy of Certificate of incorporation/registration/ Partnership deed and respective charter documents of the Bidder.			
14	Uploading of scanned copy of the Bid Form no 11: Pre-Contract Integrity Pact			
15	Tentative Business Plan : A tentative/proposed business plan consisting of Nature of Activities/Business to be conducted by Concessionaire and the tentative area /capacity/other verticals to be developed. (Signature			

(Signature of the Authorized Signatory)

12.CHECKLIST FOR E-BID FOR FINANCIAL PROPOSAL

(FINANCIAL BID) – only to be uploaded online.

Bid Document no:- CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

S. N.	Document / enclosure for submission	Document Submitted (Yes / No / Not Applicable)	Page Nos (___ to ___)	Total No of Pages
1	Financial Bid of the Bidder/ Lead Member as per the prescribed format in Bid Form-12; to be submitted ONLINE only duly digitally signed by authorized signatory of the Bidder			

Note:

- a) All financial proposals/ documents along with check list in separate cover to be uploaded online with digital signature

Digitally Signed

.....

13. APPLICABLE BID FORMS FOR RELEVANT CATEGORY BIDDER(S)

Bid Forms	Sole Bidder				Consortium
	Individual	Proprietor	Partnership firm/LLP	Company	
BID FORM 1: Covering Letter	✓	✓	✓	✓	✓
BID FORM 2: General Information about the Bidder	✓	✓	✓	✓	✓
BID FORM 3: Information for Technical Capacity	✓	✓	✓	✓	✓
BID FORM 4: Information for Financial Capacity	✓	✓	✓	✓	✓
BID FORM 5: Mandatory Legal provisions to be included in Joint Bidding Agreement by Consortium Members					✓
BID FORM 6: Special Power of Attorney for signing of Bid			✓	✓	✓
BID FORM 7: Special Power of Attorney in favour of the Lead Member of Consortium					✓
BID FORM 8: Undertaking from Bidder for Claiming Financial Experience of Associate Entity	✓	✓	✓	✓	✓
BID FORM 8A: Undertaking from each Bidder for Claiming Financial Experience of Partnership Firm			✓		✓
BID FORM 9: Statement of Legal Capacity	✓	✓	✓	✓	✓
BID FORM No. 10: Affidavit for compliance of the payment terms	✓	✓	✓	✓	✓
BID FORM No. 11: Pre-Contract Integrity Pact	✓	✓	✓	✓	✓
RFP Part II & III	✓	✓	✓	✓	✓
BID FORM 12: Financial Proposal (online only)	✓	✓	✓	✓	✓
Pre-Contract Integrity Pact	✓	✓	✓	✓	✓
Tentative Business Plan	✓	✓	✓	✓	✓

**The above check-lists have been prepared only for convenience purposes. Any omission in the same shall not exempt the Bidders from complying with the terms of the RFP in its entirety.*

BID FORM 1: Covering Letter

Date: _____

To,
General Manager (NBP&P)
Central Warehousing Corporation
Central Warehousing Corporation, 4/1 Siri Institutional Area,
Hauz Khas, New Delhi-110 016

Sub:- Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India

Dear Sir,

1. With reference to your Bid Document no: **CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023** of YYYY, I/We _____ (Name of Bidder/Name of the Consortium/ Names of all members of the consortium) hereby undertake that I/We _____ (Name of Bidder/Name of the Consortium/Names of all members of the Consortium) have studied the whole RFP carefully in addition to all other Bidding Documents, addendums, amendments, etc. and understood their contents,
2. We.....(Name of Bidder/Name of the Consortium/Names of all members of the Consortium) hereby unconditionally agree to abide by all provisions, terms and conditions contained therein and hereby submit our Bid for the aforesaid Project for the Site at the following locations: *(Kindly strike-off the locations the bidder is not bidding for)*

S. No.	Site Location	State	Region
1	Narela	Delhi	Delhi
2	Vashi	Maharashtra	Mumbai
3	Mannargudi	Tamil Nadu	Chennai
4	Padakakani	Andhra Pradesh	Hyderabad
5	Rayanapadu	Andhra Pradesh	Hyderabad
6	Shahganj	Uttar Pradesh	Lucknow
7	Amritsar	Punjab	Chandigarh
8	Pathankot	Punjab	Chandigarh

3. My/Our Bid is unconditional and unqualified.
4. I/We also agree to keep this offer open for acceptance for a period of 180 days from the Bid opening Date.
4. I/We also hereby agree and undertake to abide by all the terms and conditions of the Bid Documents.
5. I/ We acknowledge that the CWC will be relying on the information provided in the Bid and the documents accompanying the Bid for allotment of the aforesaid Plot and we certify that all information provided therein is true and correct; nothing has been omitted which renders such information misleading; and all documents accompanying the Bid are true copies of their

- respective originals.
6. This statement is made for the express purpose of our selection as Concessionaire for the aforesaid Site.
 7. I/ We shall make available to the CWC any additional information it may find necessary or require supplementing or authenticate the Bid.
 8. I/ We acknowledge the right of the CWC to reject our Bid without assigning any reason or otherwise and hereby waive, to the fullest extent permitted by applicable law, our right to challenge the same on any account whatsoever.
 9. I/ We certify that in the last three years, I/we/any of the Members of our consortium have neither failed to perform on any contract, nor subject to imposition of any penalty/ damages / costs by an arbitral or judicial authority or a judicial pronouncement or arbitration award, nor been expelled from any project or contract nor have had any contract terminated for breach on our part.
 10. I/We declare that:
 - a. I/We have examined and have no reservations to the Bid Documents, including any addendum issued by CWC; and
 - b. I/We do not have any conflict of interest, in accordance with the terms/clauses of the Bid Documents that affects the bidding process; and
 - c. I/We have not directly or indirectly or through an agent engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, in respect of any tender or request for proposal issued by or any agreement entered into with the CWC or any other public sector enterprise or any Government, Central or State; and
 - d. I/We hereby certify that I/we have taken steps to ensure that in conformity with the provisions of The Bid Documents, no person acting for me/us or on my/our behalf has engaged or will engage in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice; and
 - e. I/We hereby certify that we are not otherwise debarred from participating in this Bid by any provision of Applicable Laws; and
 - f. The undertakings given by me/us along with the Proposal in response to the Bid Documents for the Project were true and correct as on the date of making the Proposal and are also true and correct as on the Bid Opening Date and I/We shall continue to abide by them.
 11. I/ We understand that you may cancel the Bidding Process at any time and that you are neither bound to accept any Bid that you may receive nor to invite the Bidders to Bid for the Project, without incurring any liability to the Bidders
 12. I/We believe that I/We/ our Consortium satisfy(ies) the Financial Eligibility specified in the Bid Documents.
 13. I/We declare that I/We/ any Member of the consortium, am/are/ is not a Member of any other Bidder/consortium submitting a Bid for the Project.

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14. I/We certify that in regard to matters other than security and integrity of the country, I/We/ our consortium or any Member of our consortium has not been convicted by a court of law or indicted or adverse orders passed by a regulatory authority, which could cast a doubt on our ability to undertake the Project or which relates to a grave offence that outrages the moral sense of the community nor is there any such investigation pending against us.
15. I/We further certify that in regard to matters relating to security and integrity of the country, I/We/ our consortium or any Member of our consortium have/has not been charge-sheeted by any agency of the Government or convicted by a court of law for any offence committed by us or by any of our associates nor is there any such investigation pending against us.
16. I/We further certify that no investigation by a regulatory authority or security agency relating to security and integrity of the country is pending either against us or against our associates or against our Chief Executive Officer (CEO) / Chief Financial Officer (CFO) or any of our directors/ managers/ employees etc.
17. I/We undertake that in case due to any change in facts or circumstances during the bidding process, the provisions of disqualification in terms of the guidelines referred to above, are attracted in our case, we shall intimate CWC of the same immediately.
18. I/We hereby irrevocably waive any right or remedy which we may have at any stage at law or howsoever otherwise arising to challenge or question any decision taken by CWC in connection with the selection of the Bidder, or in connection with the Bidding Process itself, in respect of the above-mentioned Project and the terms and implementation thereof.
19. In the event of my/ our being declared as the Successful Bidder, I/We agree to sign the Letter of Award (LoA) and the Concession Agreement through SPC [RFP Part-II & III]; provided along with this bid document. We agree not to seek any changes in the aforesaid draft and agree to abide by the same. Also, I/We agree to pay the Performance Security in accordance in terms of bid documents.
21. I/ We have studied all the Bidding Documents carefully and have also surveyed the Site. We understand that except to the extent as expressly set forth in the Concession Agreement, we shall have no claim, right or title arising out of any documents or information provided to us by CWC or in respect of any matter arising out of or relating to the Bidding Process including the hand over of the Site.
22. Earnest Money Deposit (EMD) of Rs 8,00,000/- [IndianRupees EightLakh Only] is hereby submitted online or in the form of NEFT/RTGS to CWC in accordance with the Bid Documents. I/We understand that the full value of the Earnest Money Deposit (EMD) shall stand forfeited in case I/We fail to fulfil the requirements laid down in the bid Documents for the purpose.
23. I/We also understand that the full value of Earnest Money Deposit (EMD) shall be forfeited in case I/We fail to fulfil the requirements laid down in the Bid document for the purpose.
24. Our Financial Proposal is enclosed in a separate sealed Cover 2. The annual offered Concession fee has been quoted by me /us after taking into consideration all the terms and conditions stated in the Bidding Documents, our own estimates of costs and after a careful assessment of the RFP and Site and fall the conditions that may affect the Site.
25. I/ We agree and understand that the Bid is subject to the provisions of the Bid Documents. In no case, I/We shall have any claim or right of whatsoever nature if the Concession is not awarded to me/us or our Bid is not opened or rejected.

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26. We declare that the information stated above and in the aforementioned attachments is complete and absolutely correct and any error or omission therein, accidental or otherwise, will be sufficient for CWC to reject our Bid and forfeit the Earnest Money Deposit (EMD).
27. I/We has/have examined the relevant papers for the Site available with CWC such as land plan before submission of the Bid. CWC shall not be held responsible for any delay on account of any shortcoming in land plan, and no demand for any compensation shall be raised against CWC on this account.
28. I/We, agree to be severally/jointly liable for all the obligations as this bid document.

In witness thereof, I/ We submit this Bid under and in accordance with the terms of the Bid Documents.

Yours faithfully,

Seal of the Bidder/ (Signature of the Bidder/Authorized Signatory)
{Lead Member of the Consortium} (Name and designation)

Date:

Place:

- Encl: 1. Checklist of Documents submitted by us
2. Earnest Money Deposit (EMD)
3. Other documents as per prescribed formats

Note: 1. If the Bidder is not a consortium, the provisions applicable to consortium may be omitted.
2. Strike out whichever is not applicable if the Bidder is not an Individual.

BID FORM 2: General Information about the Bidder

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

**Name of Project:- Request for Proposal for Development of the Warehouse Facility through PPP
under DBFOT model at 08 locations across India**

1. Full Name of the Bidder : (in Block Letters)

2. Bidder's Constitution (for example: Individual/Proprietorship/ Partnership/LLP/Public Limited Co./ Pvt. Ltd. Co.)

3. Bidder's Registered Office and Place of Business and branch office(s) in India, if any, or Residence

4. Bidder's Telephone No.
E-mail address

5. Name & Address of Proprietor/ Partners/ Directors of the Company
(Provide names, office & residential addresses, telephone nos., fax nos., e-mail, Profession/ Business engaged in, etc.)

6. Profile of the Bidder giving details of current activities, background of promoters and management structure including evidence of incorporation and proposed role and responsibilities in this Project, brief description of its main lines of business, details of current activities, Country of incorporation.

7. Details of individual(s) who will serve as the point of contact/communication for CWC
 - (a) Name:
 - (b) Designation:
 - (c) Company:
 - (d) Address:
 - (e) Telephone Number:
 - (f) E-Mail Address:
 - (g) Fax Number:

8. Particulars of the Authorised Signatory of the Bidder, if any
 - (a) Name:
 - (b) Designation:

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- (c) Address:
- (d) Phone Number:
- (e) Fax Number:
- (d) E-Mail Address

9. PAN CARD NUMBER (Copy of PAN CARD to be attached):

10. GST Number (Copy of GST to be attached):

11. Other Documents to be attached:

- i. For Registered Company/PSU/ statutory body:
 - Copy of Certificate of Incorporation
 - Copy of Memorandum of Association
 - Copy of Articles of Association
 - Current List of Auditors
- ii. For Partnership Firm:
 - Copy of the partnership deed
 - List of partners
 - Copy of registration of Partnership deed.
- iii. For Sole Proprietorship:
 - Declaration of Sole Proprietorship as per Schedule-IV under the Digital signature of sole proprietor.
- iv. For LLP:
 - Copy of Limited Liability Partnership Agreement.
 - Copy of certificate of registration.
 - Current list of Partners.
- v. For Co-operative Society:
 - Bye-Laws (of cooperative Society).
 - Registered Co-op. Societies should furnish the proof of Registration with Registrar of Co-op. Societies or Taluk Co-op. Officer along with a resolution passed by the Society to participate in the tender.
- vi. For Others:
 - Notarized copy of certificate of Incorporation.

Note:

1. In case of foreign company (ies), the same must be incorporated under the laws of the country of registration.
2. Certificate of Incorporation or equivalent of such foreign company should be either certified by the statutory auditor of the company or the Company Secretary.
3. All information required in terms of this Form shall be given in respect of each of the Members of the consortium.

BID FORM 3: Information for Technical Capacity

(For Bidder/ Each Member of the Consortium)

A. For development projects

Bidder type #	Proposed Equity Shareholding in Consortium (%)	Number of Project	Project Description as per Clause 4.1	Project Cost (Equivalent INR. crore) \$\$
(1)	(2)	(3)	(4)	(5)
Single entity bidder		Project 1		
		Project 2		
		Project 3		
		Project 4		
Consortium Member 1		Project 1		
		Project 2		
		Project 3		
		Project 4		
Consortium Member 2		Project 1		
		Project 2		
		Project 3		
		Project 4		
Consortium Member 3		Project 1		
		Project 2		
		Project 3		
		Project 4		
Consortium Member 4		Project 1		
		Project 2		
		Project 3		
		Project 4		

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B. For Operations & maintenance projects

Bidder type #	Proposed Equity Shareholding in Consortium (%)	Number of Project	Project Description as per Clause 4.1	Warehouse facility under Operations/ Maintenance (sqmts)	Earnings from the facility in last 5 years (Equivalent INR. crore) \$\$
(1)	(2)	(3)	(4)	(5)	
Single entity bidder		Project 1			
		Project 2			
		Project 3			
		Project 4			
Consortium Member 1		Project 1			
		Project 2			
		Project 3			
		Project 4			
Consortium Member 2		Project 1			
		Project 2			
		Project 3			
		Project 4			
Consortium Member 3		Project 1			
		Project 2			
		Project 3			
		Project 4			
Consortium Member 4		Project 1			
		Project 2			
		Project 3			

**Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model
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		Project 4			
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A Bidder consisting of a single entity should fill in details as per the row titled Single entity Bidder and ignore the rows titled Consortium Member. In case of a Consortium, the row titled Single entity Bidder may be ignored. In case credit is claimed for an Associate, necessary evidence to establish the relationship of the Bidder with such Associate,

\$\$ For conversion of other currencies to Indian Rupees the rate of conversion shall be as per the Reserve Bank of India ("RBI") reference rate as on the first day of the month preceding the month of the opening of the Bid. In case of currencies not indicated under the RBI reference rate, the same shall be converted to US\$ as per the IMF reference rate as on the Conversion Date and the amount so derived in US\$ shall be converted into Indian Rupees as per the US\$ RBI reference rate as on the conversion date.

Note:

- 1. Only completed projects will be considered for evaluation. The bidder shall submit the completion certificate along with the CA certificate specifying the Project Cost as per the format specified in Schedule-II.*
- 2. In case the project submitted by the bidder is undertaken in a consortium. The consortium agreement mentioning the share of each party shall be submitted along with the bid documents.*
- 3. If Company A is showcasing this project as the eligibility project, then the project cost considered for evaluation will only be INR 40 Crores (i.e., 40% of the total project cost). If Company A is showcasing this project as the eligibility project than the project cost considered for evaluation will only be INR 40 Crores (i.e., 40% of the total project cost).*

BID FORM4: Information for Financial Capacity

(For Bidder/ Each Member of the Consortium)

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

**Name of Project: Request for Proposal for Development of the Warehouse Facility through PPP
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Net worth: Net Worth shall mean (Paid-up Capital including Equity/Security Premium+ General Reserves) Less (Revaluation Reserves+ Accumulated Losses + Deferred Revenue Expenditure & Miscellaneous Expenditure not written off). It should be presented in the following tabular format (along with the copies of audited annual financial statement of FY claimed) certified by the Statutory Auditor/ Chartered Accountant of the Bidder or of each Member (in case of a Consortium):

Calculation of Net Worth		Amount (₹in Cr)
Particulars		As on 31st March 2023
	Subscribed and Paid up Share Capital	
Add	Equity/Security Premium	
Add	General Reserves	
Less	Revaluation Reserves	
Less	Accumulated Losses	
Less	Deferred Revenue Expenditure and Miscellaneous expenditure not written off	
TOTAL NET WORTH		

*For conversion of other currencies to Indian Rupees the rate of conversion shall be as per the Reserve Bank of India ("RBI") reference rate as on the first day of the month preceding the month of opening of Bid. In case of currencies not indicated under the RBI reference rate, the same shall be converted to US\$ as per IMF reference rate as on the Conversion Date and the amount so derived in US\$ shall be converted into Indian Rupees as per the US\$ RBI reference rate as on the conversion date.

(Name & Signature of Authorised Signatory) _____

In the capacity of _____ (position) duly authorized to sign this Bid for and behalf of
_____ (name of Bidder / Lead Member of the Consortium)

_____ (Address)

The information given above are true as per the audited annual financial statement of the Bidder/Member. We have signed this Bid Form 4 in our capacity as the Statutory Auditor/ Chartered Accountant*

of ____ (name of the Bidder/ Member of Consortium).

Signature of the Statutory Auditor/ Chartered Accountant*

Name of the Statutory Auditor/ Chartered Accountant

Seal of the Statutory Auditor/ Chartered Accountant*

Note:

1. In case a Bidder is drawing any financial eligibility of its Associate Entity,, a separate Form-4 in the name of each such company/entity firm along with proof of relationship with the Bidder/Member of the Consortium shall also be attached which should also be supported with relevant applicable Form-8& 8 (A), of the RFP Part I.
2. In case Members of a Consortium are aggregating their individual experiences to qualify, the above information must be provided separately for each Member as per the specified format signed by the respective statutory auditors.
3. For those Individuals/ Proprietorships or entities whose accounts are not required to be audited as per the law "Statutory Auditor" will be replaced with "Chartered Accountant" who is a member of ICAI.
4. In jurisdictions (foreign country) that do not have Statutory Auditors, the firm of auditors which audits the annual accounts of the Bidder may provide the certificates required under Financial Eligibility criteria.
5. In case Bid Form-4 consists of more than one-page, Statutory Auditor/ Chartered Accountant& Authorised Signatory shall sign with seal on all pages.
6. Partners of a Partnership Firm can participate as individuals or form a Consortium. The Financial experience of the partnership firm can be considered as the experience of Partner(s) in proportion to their respective stakes in the Partnership Firm for Financial eligibility for such Bidder/Member of Consortium. The Bidder has to also submit the copy of Partnership Deed and Bid Forms-8A

BID FORM 5: Mandatory Legal provisions to be included in Joint Bidding Agreement by Consortium Members

1. Covenants:
The Parties (i.e. the Consortium Members) hereby undertake that in the event the Consortium is declared the Selected Bidder and awarded the Project, it shall incorporate a new Special Purpose Company (the "SPC") under the Indian Companies Act, 2013 for performing all its obligations under Letter of Award (LoA), and perform its obligations as the Concessionaire in terms of the Concession Agreement, to be executed with Central Warehousing Corporation (CWC). All terms and conditions contained in this Concession Agreement will, insofar as they are relevant, are to be specifically incorporated in the Articles of Association of the SPC.

2. Roles of the Parties:
The Parties hereby undertake to perform the roles and responsibilities as described below:
 - a. Party of the ____ Part shall be the Lead member of the Consortium and shall have the power of attorney from all Parties for conducting all business for and on behalf of the Consortium during the Bidding Process and until the signing of the Concession Agreement when all the obligations of the SPC shall become effective. The role of First Part shall be_____.
 - b. Party of the ____ Part shall be {the Technical Member(s) of the Consortium} and the role of Second Part shall be_____.
 - c. Party of the ____ Part shall be {the Financial Member(s) of the Consortium} and the role of Third Part shall be_____.
 - d. Party of the ____ Part shall be {the Financial Member(s) of the Consortium} and the role of Fourth Part shall be_____.

3. Joint and Several Liability: -
 - a) The Parties do hereby undertake to be jointly and severally responsible for all obligations and liabilities relating to the Project and in accordance with the terms of the Bid Documents, Letter of Award (LoA), and Concession Agreement. The Parties shall mutually and jointly take all the decisions in respect of the Project on behalf of the Consortium. _____ (Lead Member) shall be authorized to act on behalf of the Consortium as their representative for bidding and implementation of the Project.
 - b) The Parties shall fully abide by all the norms with respect to building regulations and permissions (as amended from time to time) as per Development Control Regulations (DCR) and any other applicable law with respect to the Offered Area under the Project, and further the Parties shall also fully abide by the applicable Development Plan with respect to the Project.
 - c) The Parties shall not use the said Plot with respect to the Project for any purpose other than that for which it has been offered, nor shall use the building constructed on it for a purpose other than that for which it has been constructed as per the Development Plan pertaining to the said Site. The Parties shall accept and obey all applicable rules, permits and regulations made or issued by the competent authority(ies) and/or CWC from time

to time.

4. Shareholding in the SPC:

4.1 The Parties agree that the proportion of shareholding among the Parties in the SPC shall be as follows:

First Party:

Second Party:

Third Party:

Fourth Party:

5. Representation of the Parties:-

Each Party represents to the other Parties as of the date of this Agreement that:

- a) Such Party is duly organised, validly existing and in good standing under the laws of its incorporation and has all requisite power and authority to enter into this Joint Bidding Agreement;
- b) The execution, delivery and performance by such Party of this Joint Bidding Agreement has been authorised by all necessary and appropriate corporate or governmental action and a copy of the extract of the charter documents and board resolution/ power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium Member, is annexed to this Agreement, and will not, to the best of this knowledge- of the parties:
 - i. violate any Applicable Law presently in effect and having applicability to it;
 - ii. violate the memorandum and articles of association, by-laws or other applicable organisational documents thereof;
 - iii. violate any clearance, permit, concession, grant, license or other governmental authorisation, approval, judgement, order or decree or any mortgage agreement, indenture or any other instrument to which such Party is a party or by which such Party or any of its properties or assets are bound or that is otherwise applicable to such Party; or
 - iv. there is no litigation pending, or to the best of such Party's knowledge, threatened to which it or any of its Affiliates is a party that presently affects, or which would have a material adverse effect on the financial condition or prospects or business of such Party in the fulfilment of its obligations under this Agreement.

Note:

- *The Consortium members may prepare and execute a comprehensive Joint Bidding Agreement amongst themselves, however any such Joint Bidding Agreement so executed has to include the above mandatory legal provisions within it.*
- *Joint Bidding Agreement should be executed on Non-Judicial Stamp Paper of appropriate value, as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than Rs.100 and duly notarised. Joint Bidding Agreement, which is executed and issued outside the territory of India, is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Agreement is being executed.*
- *The mode of execution of the Joint Bidding Agreement should be in accordance with the procedure, if any laid down by the applicable law and the charter documents of the executants(s) and when it is*

so required, the same should be under common seal affixed in accordance with the required procedure.

- *Each Joint Bidding Agreement should attach a copy of the extract of the charter documents and documents such as resolution/power of attorney in favour of the person executing this Agreement for the delegation of power and authority to execute this Agreement on behalf of the Consortium member.*
- *For Joint Bidding Agreement executed and issued overseas, the document shall be consularized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney has been executed.*

BID FORM 6: Special Power of Attorney for signing of Bid

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

This form is to be submitted only by the Bidder/ Lead Member, in case of Consortium.

(To be executed on Non-Judicial Stamp Paper of appropriate value (as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than ₹100) and duly notarised. Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where this Power of Attorney is being executed)

Know all men by these presents, We, _____ (name of the Bidder and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorise Mr. / Ms (Name), son/daughter/wife of _____ and presently residing at _____, who is [presently employed with us/ the Lead Member of our Consortium and holding the position of _____], as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our bid for **"Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India "** Project proposed by the Central Warehousing Corporation (CWC), including but not limited to signing and submission of all bids and other documents and writings, participating in Bidders' and other conferences and providing information / responses to CWC, representing us in all matters before CWC, signing and execution of all contracts including the LoA, Concession Agreement and undertakings consequent to acceptance of our bid, and generally dealing with CWC in all matters in connection with or relating to or arising out of our bid for the said Project and/or upon award thereof to us and/or till the entering into of the Concession Agreement with CWC.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.

IN WITNESS WHEREOF WE, _____, THE ABOVE-NAMED PRINCIPAL HAVE EXECUTED THIS POWER OF ATTORNEY ON THIS _____ DAY OF _____, 20xx

FOR.....

Signature _____

(Director)

Name of the Person : _____

Address

Company Seal :

I Accept

(Signature of the Attorney)

(Name, Title and Address of the Attorney)

(Director of the Lead Member)

I hereby attest and identify the signatures of our Attorney above-named.

Signature _____

(Director)

Name of the Person : _____

Address

Seal of the Entity :

[Notarised]

Name, Sign and Seal of the Notary

Witnesses:

1.

2.

Note:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law and the charter / organizational/ constitutional documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
- Also, wherever required, the Bidder should submit, for verification, the extract of the charter documents and documents such as a resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
- The Power of Attorney should be duly supported with the enabling Board Resolution of the executants.
- For a Power of Attorney executed and issued overseas, the document will also have to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention, 1961 are not required to be consularized by the Indian Embassy if it carries a conforming Appostille certificate.

BID FORM 7: Special Power of Attorney in favour of the Lead Member of Consortium

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

(To be executed on Non-Judicial Stamp Paper of appropriate value (as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than ₹100) and duly notarised. Power of Attorney executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where this Power of Attorney is being executed)

WHEREAS THE CENTRAL WAREHOUSING CORPORATION (the "Corporation" or "CWC") has invited Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India (the "Project").

WHEREAS, M/s ____, M/s ____ and M/s _____ (insert name and address and registered office of all the Members) have formed a Consortium to submit their Bid in response to the Bid Documents for issued by the CWC.

WHEREAS, it is necessary for the Members of the Consortium to designate one of them as the Lead Member with all necessary power and authority to do for and on behalf of the Consortium, all acts, deeds and things as may be necessary in connection with the Consortium's bid for the Project and its execution.

NOW, THEREFORE, KNOW YOU ALL BY THESE PRESENTS, that

We, M/s _____ M/s _____ [name of the Company or other entities], a company incorporated/ under the Companies Act, 1956/2013 (or relevant Law of the particular country where the company is incorporated)/ registered _____, having its Registered Office at _____ [address of the company] (hereinafter referred to as "Other Member 1") and

M/s _____ M/s _____ [name of the Company or other entities], a company incorporated under the Companies Act, 1956/2013 (or relevant Law of the particular country where the company is incorporated)/ registered _____, having its Registered Office at _____ [address of the company] (hereinafter referred to as "Other Member 2") and

M/s _____ M/s _____ [name of the Company or other entities], a company incorporated under the Companies Act, 1956/2013 (or relevant Law of the particular country where the company is incorporated)/ registered _____, having its Registered Office at _____ [address of the company] (hereinafter referred to as "Other Member 3") do hereby nominate, constitute and appoint M/s _____ M/s _____ [name of the Company or other entities], a company incorporated under the Companies Act, 1956/2013 (or relevant Law of the particular country where the company is incorporated)/ registered _____, having its Registered Office at _____ [address of the company] (hereinafter referred to as "Lead Member") as its/their true and lawful Attorney to do and

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execute all or any of the following acts, deeds and things for the Consortium in its/their name and on its/their behalf, that is to say:

1. To act as the Lead Member of the Consortium for the purposes of the Project;
2. In such capacity, to act as the Consortium's official representative for submitting the Bid for the Project and other relevant documents in connection therewith.
3. To sign, deliver and receive all papers for all proposals, offers, Project documents, necessary documents, Proposals, representations and correspondence necessary and proper for the purpose aforesaid;
4. To procure tender documents, receive and make inquiries, make the necessary corrections and clarifications to the Project documents, as may be necessary;
5. To sign and execute contracts relating to the Project, including variation and modification thereto;
6. To represent the Consortium at meetings, discussions, negotiations and presentations with CWC, Government Authorities, Competent Authorities and other Project related entities;
7. To receive notices, instructions and information for and on behalf of the Consortium;
8. To do all such acts, deeds and things in the name and on behalf of the Consortium as necessary or required or incidental for the purpose aforesaid.
9. To appoint any other person(s) as our Attorney(s) to do all or any of the above acts, deed and/or things or any other act, deed and/or thing which in the opinion of our said Attorney ought to be done, executed or performed even if it has not been specifically mentioned hereinabove, and to cancel, withdraw, modify and/or revoke the powers conferred upon such attorney(s).

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things lawfully done or caused to be done by our said Attorney and/or delegated attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney and/or delegated attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us/ Consortium

IN WITNESS WHEREOF the Consortium Member(s) puts its/their hand and seal to this Power of Attorney on this [day, month & year]

FOR _____

Signature _____

(Director)

(of the Other Member 1 of the Consortium)

Name of the Person : _____

Company Seal :

FOR _____

Signature _____

(Director)

(of the Other Member 2 of the Consortium)

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Name of the Person : _____

Company Seal :

(Executants)

(To be executed by all the Other Members of the Consortium)

Countersigned by the Authorised Signatory of the Lead Member of the Consortium

Signature _____

(Director)

Name of the Person: _____

Designation: _____

Company Seal/Seal of the Entity

Notarised

Name, Sign and Seal of the Notary

Witnesses:

1.

2.

(Executants)

(To be executed by all the Other Members of the Consortium)

Note:

1. The mode of execution of the Power of Attorney should be in accordance with the procedure if any, laid down by the applicable law and the charter / organizational/ constitutional documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.
2. Also, wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a resolution/ power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.
3. The Power of Attorney should be duly supported with the enabling Board Resolution of all the Consortium Members.
4. For a Power of Attorney executed and issued overseas, the document will also have to be consularized by the Indian Embassy and notarised in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed The Hague Legislation Convention, 1961 are not required to be consularized by the Indian Embassy if it carries a conforming Appostille certificate.

BID FORM 8: Undertaking from Bidder for Claiming Financial Experience of Associate Entity

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

(Each sole Bidder/Member of a Consortium which is relying upon the financial experience of its Associate Entity has to submit this Undertaking on Non-Judicial Stamp Paper of appropriate value (*as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than ₹100*) and duly notarised. An Undertaking executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarised in the jurisdiction where the Undertaking is being executed)

Date:

Place:

To,
General Manager (NBP&P)
Central Warehousing Corporation
Central Warehousing Corporation, 4/1 Siri Institutional Area,
Hauz Khas, New Delhi -110 016

Sub:- Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India

Dear Sir,

This has reference to the Bid being submitted by _____(mention the name of Bidder/Lead Member in case of a Consortium) in respect of the captioned Project in response to the Bid Forms issued by the Central Warehousing Corporation dated _____, DD/MM/YYYY.

We hereby confirm the following:

1. I/We am/are relying upon the credentials of the following Associate Entity to Bid for the Project, and the nature of our legal relationship Bid Form-3 & 4 of RFP Part I, as per the requirements stated in the Bid Documents, is provided in the table A, B and C below. The details of the equity shareholding in support of the legal relationship, duly certified as per the requirement of this Bid Documents, are enclosed.
2. The detailed Financial experience of our holding/subsidiary Company_____ (insert name of the Associate Entity) for the above mentioned projects is enclosed, duly certified as per the requirements of Bid Form-3 and this Bid Documents in respect of Financial Eligibility.
3. We also agree that any change which affects our eligibility at any point of time till the payment of first annual offered Concession fee, could lead to termination of the contract and forfeiture of the Performance Security, as the case may be, by CWC.
4. We jointly and severally undertake to abide by all the provisions of RFP/ Bid documents including LoA, Concession Agreement.

**Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model
at 08 locations across India**

5. We are hereby enclosing necessary certificates and documents as required under the Bid Documents. We therefore request CWC to consider our financial experience as specified in the Bid Documents, for the purposes of evaluation of the financial eligibility criteria.

For and on behalf of _____(insert name of the Bidder /the Consortium)

Signature _____

(Director) (Company Secretary)

(of the Bidder / Member of the Consortium)

Name of the Person: _____

Designation: _____

Address

Company Seal/Seal of Entity

Countersigned by the Authorised Signatory of the Bidder / Lead Member in case of a Consortium

Signature _____

Name of the Person: _____

Designation: _____

Address

Enclosed: 1. _____.

2. _____.

BID FORM 8A: Undertaking from each Bidder for Claiming Financial Experience of Partnership Firm

(Each sole Bidder/Member of a Consortium which is relying upon financial experience of its Partnership Firm has to submit this Undertaking on Non-Judicial Stamp Paper of appropriate value (as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than ₹100) and duly notarized. An Undertaking executed and issued outside the territory of India is to be consularized by the Indian Embassy and notarized in the jurisdiction where the Undertaking is being executed)

Date: _____

Place: _____

To,
General Manager (NBP&P)
Central Warehousing Corporation
Central Warehousing Corporation, 4/1 Siri Institutional Area,
Hauz Khas, New Delhi - 110 016

Sub:- Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India

Dear Sir,

This has reference to the Bid being submitted by _____ (Mention the name of Bidder/ Lead Member in case of a Consortium) in respect of the captioned Project in response to the Bid Forms issued by the Central Warehousing Corporation dated _____ DD/MM/YYYY.

I/We hereby confirm the following:

1. I Am/We are relying upon the credentials of the following Partnership Firm to Bid for the Project, and the nature of my/our legal relationship, as per the requirements stated in the Bid Documents, is provided in the tables A, B and C below. The details of my/our stake (Copy of Partnership Deed etc.) in support of the legal relationship, duly certified as per the requirement of the Bid Documents are enclosed.

Details of Net-worth to be considered to fulfil the Financial Eligibility:

Calculation of Net Worth		Amount (₹in Cr)
Particulars		As on 31st March 2021
	Subscribed and Paid up Share Capital	
Add	General Reserves	
Less	Revaluation Reserves	
Less	Accumulated Losses	
Less	Deferred Revenue Expenditure and Miscellaneous expenditure not written off	
TOTAL NET WORTH		

**Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model
at 08 locations across India**

2. The detailed Financial eligibility of the Partnership Firm _____(insert name of the Partnership Firm) for the above mentioned projects, Total/Gross Turnover and Net-worth is enclosed, duly certified as per the requirements of this Bid Documents in respect of Technical and/or Financial Eligibility.
3. I/We also agree that any change which affects my/our eligibility at any point of time till the payment of first annual offered Concession fee could lead to termination of the contract and forfeiture of the Earnest Money Deposit (EMD) by CWC.
4. I am/We are hereby enclosing necessary certificates and documents as required under the Bid Documents. We therefore request CWC to take into account the above credentials of the Partnership Firm while considering my/our technical and/or financial strengths, experience and track record as specified in the Bid Documents, for the purposes of evaluation of the minimum technical and/or financial eligibility criteria.

For and on behalf of: _____ (insert name of the Bidder/Member of the Consortium which is relying upon the experience of its Partnership Firm)

Signature

(Bidder/ Member of the Consortium)

Name of the Person:

Designation:

Address:

Enclosed: 1. _____

2. _____

BID FORM 9: Statement of Legal Capacity

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

{To be printed on the authorised Letter head of the Bidder (in case of sole Bidder) or the Lead Member (in case of Consortium), including full postal address, telephone, faxes and e-mail address}

Date: _____

Place: _____

To,
General Manager (NBP&P)
Central Warehousing Corporation
Central Warehousing Corporation, 4/1 Siri Institutional Area,
Hauz Khas, New Delhi-110 016

Sub:- Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India

Dear Sir,

We hereby confirm that we/**our members in the Consortium (constitution of which has been described in the Bid) are permitted to Bid and execute the Project(s), if selected, as per the object of business of our charter/ registration/ incorporation documents, satisfy the terms and conditions laid out in the Bid Documents and that we are not otherwise debarred from bidding for this Project(s) by any provision of Applicable Laws.*

We have agreed that _____(insert Member's name) will act as the Lead member of our Consortium.

We have agreed that _____(insert individual's name) will act as our representative/ will act as the representative of the Consortium on behalf** and has been duly authorised to submit the Bid Documents. Further, the authorised signatory is vested with requisites power to furnish such letter and authenticate the same.

Thanking you,

Yours faithfully,

(Signatory, name and designation of the authorised signatory)

For and on behalf of _____

* Copy of charter/registration/incorporation documents should be attached with this Bid Form.

** *Please strike out whichever is not applicable*

BID FORM 10: Affidavit for compliance to payment terms

[To be provided by the Successful Bidder along with the Financial Bid]

(To be executed on Non-Judicial Stamp Paper of appropriate value (as prescribed by the Stamp Act of the respective State in which the document has to be executed but not less than Rs.100)

I/we, [Name], having is registered office at [Address], represented through its authorised signatory [Name]/ [resident of [Address], aged [•]] (**as applicable**), do hereby solemnly affirm and declare that-

I/ We intend to participate in the tender process for Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India bearing Bid Document No. **CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023**

1. I/ We have paid an amount of Rs. 8,00,000/- (Indian Rupees EightLakh Only) as Earnest Money Deposit (EMD) at the time of release of RFP for participation in the bidding process.
2. I / We agree and acknowledge that upon submission of the Financial Bid, in the event I/ we am/ are declared as the Highest Bidder (H1) bidder for the said Tender, CWC will issue a LoA in my/ our favour.
3. After issuance of the LoA in my/ our favour and upon acceptance of the LoA by me/ us within 7 (seven) days of receipt of the LoA, I /we acknowledge that I/ we shall be required to submit the performance Bank Guarantee equivalent to the sum of two years to quoted annual Concession Fee to CWC within 45 days from the date of issuance of this LoA or before the execution of the Concession Agreement whichever is earlier in accordance with the terms of the Bid Documents.
4. I hereby agree and acknowledge that upon complete payment of the Concession Fee within a period of 45 days from the date of issuance of the LoA, CWC shall sign the Concession Agreement. In this regard, I hereby agree and acknowledge that the issuance of the Concession Agreement does not grants or vests any ownership rights and/ or possession rights over the Site/Facility in my/ our favour in any manner whatsoever, and CWC shall continue to have complete ownership and possession of the Site/Facility. However, CWC will hand over the Site to the Concessionaire onthe appointed date as defined in the concession agreement after compliance of the requisite conditions as mentioned in the concession agreement, for the Concession Period of 45 (Forty-Five) years subject to and in accordance with the provisions of the concession agreement., mentioned in the concessionaire agreement. Further, the Concessionaire will hand over the Site/Facility to the Corporation without any encumbrance or financial liability at the end of concession period.
5. I/ we hereby agree and acknowledge that in the event I/we are unable to or fail to make complete payment of the Concession Fee (along with the accrued interest therein, if any) within the stipulated time period on or before the due date of payment in accordance

with the terms of the LoA, the Concession Agreement and the Bid Documents, I/ we hereby unconditionally and irrevocably agree that CWC at its sole discretion shall have the absolute right to forfeit the Earnest Money Deposit (EMD) and take further appropriate actions as per terms of Bid Documents. In this regard, I/ we shall not raise any objections and I/ we hereby give my/ our full consent to the forfeiture of the Earnest Money Deposit (EMD) amount by CWC.

6. I/ We further unconditionally agree that due to my/ our inability and failure to pay any instalment of the Concession Fee (along with the accrued interest therein, if any) within the stipulated time period on or before the due date of payment in accordance with the terms of the LoA, the Concession Fee and the Bid Documents, CWC or the competent authority in this regard, including CWC shall have the absolute right to exercise any or all of the following rights against me/ us:
 - a. Forfeit the Earnest Money Deposit (EMD) amount and any other amounts paid by me to CWC;
 - b. Forfeit the Performance Security amount paid by me to CWC in the form of Bank Guarantee.
 - c. Impose penal interest for delay in payment computed in accordance with the interest rates set out in the Bid Documents;
 - d. To recover from me/ us any loss that is incurred by CWC due to re-tendering the said Project
 - e. Recoveries can be made against me/ us by deducting/ setting off any recovery amount from the amount deposited by me/ us with CWC pursuant to my/ our participation in any other tender floated by CWC
 - f. To disqualify/ blacklist me/ us from participation in any other tenders floated by CWC for a period 5 years;
7. I/ We hereby further agree, acknowledge and affirm that in the event of any change in applicable laws including but not limited to the local laws of the State, CWC shall have the absolute right to change the terms and conditions of the Bid Documents and I/ we shall have no objection to the same.
8. In the event of exercise of any and all rights by CWC, as set out in Para 8 above, I/ we shall have no objection to the same and hereby provide by irrevocable consent regarding it. Further, I/ we hereby undertake and covenant that in the event of exercise of such rights by CWC, I/ we will not challenge any such action of CWC before any court of law and shall abide by the orders of CWC.
9. I/ We hereby confirm that my/ our details for serving any show cause notice and/ or any other notice by CWC shall be as follows and in the event, there is any change in the below mentioned details, I/ we shall inform CWC with immediate effect:
 - a. Name of Individual/ Name of Company [as applicable];
 - b. Name of authorised signatory (if applicable)
 - c. Address/ Registered office address:
 - d. Mobile No/ Contact No:

e. Email ID:

f. Fax No:

10. I/ We hereby represent and warrant that all the information provided by the me/ us as required under the Bid Documents is true, correct, complete and accurate in all respects and if found incorrect, untrue or incomplete, CWC shall have the right to exercise any rights mentioned in Para 8 above and/ or impose penalties upon me/ us in accordance with the provisions of the Bid Documents.
11. We have read and understood all the provisions included in the bid documents and abide by them.
12. The information furnished by us is correct and we understand the consequences in case any of the information furnished is not found to be true.

(To be signed by the Authorized Representative of the Firm/ Signed by Individual [as applicable])

Name of the Authorized Representative/ Individual [As applicable].

Name of the Firm (if applicable)

Dated:

BID FORM 11: Pre-Contract Integrity Pact

(Under digital signature of Authorized Signatory)

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

General

This pre-bid/ pre-contract Agreement (hereinafter called the Integrity Pact) is made on __ _ day of the month of ___ between on one hand, the Central Warehousing Corporation (A Govt. of India Undertaking), 4/1 Siri Institutional Area, Hauz Khas, New Delhi acting through Regional Manager, Central Warehousing Corporation (A Govt. of India Undertaking) (hereinafter called the "CORPORATION" which expression shall mean and include, unless the context otherwise requires, his successors in office and assigns) of the First Part and *Mis* represented by Shri ___ , (Name of the contractor) (hereinafter called BIDDER which expression shall mean and include, unless the context otherwise requires, his successors and permitted assigns) of the Second Part

WHEREAS the CORPORATION proposes to appoint Concessionaire at ___ and the BIDDER is willing to execute the items of work / Section as per schedule of work, the work order issued General conditions of the contract of CWC.

WHEREAS the BIDDER is a private company / public company / Government undertaking / partnership firm constituted in accordance with the relevant law in the matter and the corporation is a PSU performing its functions on behalf of the Ministry of Consumer Affairs, Food and Public Distribution, New Delhi, Govt. of India.

NOW, THEREFORE,

To avoid all forms of corruption by following a system that is fair, transparent and free from any influence / prejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to: -

Enabling the CORPORATION to obtain the desired said work at a competitive price in conformity with the defined specifications by avoiding the high cost and the distortionary impact of corruption on public procurement, and

Enabling BIDDER to abstain from bribing or indulging in any corrupt practice in order to secure the contract by providing assurance to them that their competitors will also abstain from bribing and other corrupt practices and the CORPORATION will commit to prevent corruption, in any form, by its officials by following transparent procedures.

The parties hereto hereby agree to enter into this integrity Pact and agree as follows:

1. Commitments of the Corporation

1.1. The Corporation undertakes that no official of the CORPORATION, connected directly or indirectly with the contract, will demand, take a promise for or accept, directly or through intermediaries, any bribe, consideration, gift, reward, favour or any material or immaterial

benefit or any other advantage from the BIDDER, either for themselves or for any person, organization or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to the contract.

- 1.2. The CORPORATION will, during the pre-contractor stage, treat all BIDDERS alike and will provide to all BIDDERS the same information and will not provide any such information to any particular BIDDER which could afford an advantage to that particular BIDDER in comparison to other BIDDERS
 - 1.3. All the officials of the CORPORATION will report to the appropriate authority any attempted or completed breaches of the above commitments as well as any substantial suspicion of such a breach.
2. In case any such preceding misconduct on the part of such official(s) is reported by the BIDDER to the CORPORATION with full and verifiable facts and the same is prima facie found to be correct by the CORPORATION, necessary disciplinary proceedings, or any other action as deemed fit, including criminal proceedings may be initiated by the CORPORATION and such a person shall be debarred from further dealings related to the contract process. In such a case while an enquiry is being conducted by the CORPORATION the proceedings under the contract would not be stalled.

3. Commitments of BIDDERS

The BIDDER commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commit itself to the following: -

- 3.1. The BIDDER will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the CORPORATION, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2. The BIDDER further undertakes that it has not given, offered or promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the CORPORATION or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the contract or any other contract with the CORPORATION for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the CORPORATION.
- 3.3. The BIDDER, either while presenting the bid or during pre-contract negotiations or before signing the contract, shall disclose any payments he has made, is committed to or intends to make to officials of the CORPORATION or their family members, agents, brokers or any other intermediaries in connection with the contract and the details of services agreed upon for such payments.
- 3.4. The BIDDER will not collude with other parties interested in the contract to impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.

- 3.5. The BIDDER will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.
- 3.6. The BIDDER shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the CORPORATION as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The BIDDER also undertakes to exercise due and adequate care lest any such information is divulged.
- 3.7. The BIDDER commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.
- 3.8. The BIDDER shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.
- 3.9. If the BIDDER or any employee of the BIDDER or any person acting on behalf of the BIDDER, either directly or indirectly, is a relative of any of the officers of the CORPORATION, or alternatively, if any relative of an officer of the CORPORATION has financial interest/ stake in the BIDDER's firm, the same shall be disclosed by the BIDDER at the time of filling of tender. The term 'relative' for this purpose would be as defined in Section 6 of the Companies Act 1956.
- 3.10. The BIDDER shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the CORPORATION

4. Previous Transgression

- 4.1. The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.
- 4.2. The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

5.

5.1. Sanctions for Violations

Any breach of the aforesaid provision by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER) shall entitle the CORPORATION to take all or any one of the following actions, wherever required:-

- (i) To immediately call off the pre-contract negotiations without assigning any reason or giving any compensation to the BIDDER. However, the proceedings with the other BIDDER(s) would continue.
- (ii) The Earnest Money Deposit/ The Bid Security Declaration (Appendix-XIV) shall stand effective (in pre-contract stage) and /or Security Deposit / Performance Bond (after the contract is signed) shall stand forfeited either fully or partially, as decided by the CORPORATION and the CORPORATION shall not be required to assign any reason therefore.
- (iii) To immediately cancel the contract, if already signed, without giving any compensation to the BIDDER.

- (iv) To recover all sums already paid by the CORPORATION, and in case of an Indian BIDDER with interest thereon at 2% higher than the prevailing Prime Lending Rate of State Bank of India, while in case of a BIDDER from a country other than India with interest thereon at 2% higher than the LIBOR. If any outstanding payment is due to the BIDDER from the CORPORATION in connection with any other contract for any other stores / work such outstanding payment could also be utilized to recover the aforesaid sum and interest.
- (v) To encash the advance bank guarantee and performance bond / warranty bond, if furnished by the BIDDER, in order to recover the payments, already made by the CORPORATION, along with interest.
- (vi) To cancel all or any other Contracts with the BIDDER. The BIDDER shall be liable to pay compensation for any loss or damage to the CORPORATION resulting from such cancellation/ rescission and the CORPORATION shall be entitled to deduct the amount so payable from the money(s) due to the BIDDER.
- (vii) To debar the BIDDER from participating in future bidding processes of the CORPORATION for a minimum period of five years, which may be further extended at the discretion of the CORPORATION.
- (viii) To recover all sums paid in violation of this Pact by BIDDER(s) to any middleman or agent or broker with a view to securing the contract.
- (ix) In cases where irrevocable Letters of Credit have been received in respect of any contract signed by the CORPORATION with the BIDDER, the same shall not be opened.
- (x) Forfeiture of Performance Bond in case of a decision by the CORPORATION to forfeit the same without assigning any reason for imposing sanction for violation of this Pact.

5.2. **The CORPORATION** will be entitled to take all or any of the actions mentioned at para 6.1(i) to (x) of this Pact also on the Commission by the BIDDER or any one employed by it or acting on its behalf (whether with or without the knowledge of the BIDDER), of an offence as defined in Chapter IX of the Indian Penal code, 1860 or Prevention of Corruption Act, 1988 or any other statute enacted for prevention of corruption.

5.3. The decision of the CORPORATION to the effect that a breach of the provisions of this Pact has been committed by the BIDDER shall be final and conclusive on the BIDDER. However, the BIDDER can approach the independent Monitor(s) appointed for the purposes of this Pact.

6. Fall Clause

6.1. The BIDDER undertakes that it has not supplied / is not supplying similar product / systems or subsystems at a price lower than that offered in the present bid in respect of any other Ministry / Department of the Government of India or PSU and if it is found at any stage that similar product / systems or sub systems was supplied by the BIDDER to any other Ministry / Department of the Government of India or a PSU at a lower price, then that very price, with due allowance for elapsed time, will be applicable to the present case and the difference in the cost would be refunded by the BIDDER to the CORPORATION, if the contract has already been concluded.

7. Independent Monitor

- 7.1.** The CORPORATION has appointed **Sh. Sudhanshu Sekhara Mishra**, E-112, Falcon Residency Apartment, Near KIIT, Patia, Bhubaneswar-7, Dist.Khuda, Odisha **AND Sh. Rajni Kant Mishra**, Parijat, Near Hotel Niharika Palace, Village Thapaliya MehraGaon, Naukuchiya Tal , Dist. Nainital, Uttarakhand as Independent Monitors(hereinafter referred to as Monitors) for this Pact in consultation with the Central Vigilance Commission.
- 7.2.** The task of the Monitor shall be to review independently and objectively, whether and to what extent the parties comply with the obligations under this Pact.
- 7.3.** The Monitor shall not be subject to instructions by the representatives of the parties and perform their functions neutrally and independently.
- 7.4.** Both the Parties accept that the monitors have the right to access all the documents relating to the project / procurement, including minutes of meetings.
- 7.5.** As soon as the Monitor notices, or has reason to believe, a violation of this Pact, he will so inform the Authority designated by the CORPORATION.
- 7.6.** The BIDDER(s) accepts that the Monitor has the right to access without restriction to all Project documentation of the CORPORATION including that provided by the BIDDER. The BIDDER will also grant the Monitor, upon his request and demonstration of a valid interest, unrestricted and unconditional access to his project documentation. The same is applicable to Subcontractors. The Monitor shall be under contractual obligation to treat the information and documents of the BIDDER / Subcontractor(s) with confidentiality.
- 7.7.** The CORPORATION will provide to the Monitor sufficient information about all meetings among the parties related to the Project provided such meetings could have an impact on the contractual relations between the parties. The parties will offer to the Monitor the option to participate in such meetings.
- 7.8.** The Monitor will submit a written report to the designated Authority of CORPORATION within 8 to 10 weeks from the date of reference or intimation to him by the CORPORATION / BIDDER and, should the occasion arise, submit proposals for correcting problematic situations.

8. Facilitation of Investigation

In case of any allegation of violation of any provisions of this Pact or payment of commission, the CORPORATION or its agencies shall be entitled to examine all the documents including the Books of Accounts of the BIDDER and the BIDDER shall provide necessary information and documents in English and shall extend all possible help for the purpose of such examination.

9. Law and Place of Jurisdiction

This Pact is subject to Indian Law. The Place of performance and jurisdiction is the seat of the CORPORATION.

10. Other Legal Actions

The actions stipulated in this integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the extant law in force relating to any civil or criminal proceedings.

11. Validity

11.1. The validity of this Integrity Pact shall be from date of its signing and extend upto 5 years or the complete execution of the contract to the satisfaction of both the CORPORATION and the BIDDER/ Seller, including warranty period, whichever is later. In case BIDDER is unsuccessful, this integrity Pact shall expire after six months from the date of the signing of the contract.

11.2. Should one or several provisions of this Pact out to be invalid; the remainder of this Pact shall remain valid. In this case, the parties will strive to come to an agreement to their original intentions.

12. The parties hereby sign this Integrity Pact at ____ on ____

CORPORATION

BIDDER

Name of the Officer

Name of the Officer

Designation

Designation

Witness

Witness

1.

1.

2.

2.

BID FORM 12: Financial Proposal

(to be submitted online only)

To macros enabled excel sheet to be uploaded on the portal

Bid Document No. CWC CO-CD0COMM/16/2022-CoMM dated 28.10.2023

Date: _____

To,
General Manager (NBP&P)
Central Warehousing Corporation
Central Warehousing Corporation, 4/1 Siri Institutional Area,
Hauz Khas, New Delhi-110 016,

Sub:- Request for Proposal for Development of the Warehouse Facility through PPP under DBFOT model at 08 locations across India

Dear Sir,

I/We agree to abide by this Bid, which consist of our financial offer hereto, for a period of 180 (one hundred and eighty) days from the Bid Opening Date and it shall remain binding on me/us and may be accepted by you any time before the expiration of the said period.

I/We offer ₹_____ * **[in words & number] per annum excluding GST** as Concession Fee for grant of right to use the area of as per the list below in terms of the Concession Agreement and agree to the Payment terms provided in the concession agreement.

A.	Minimum Guaranteed Revenue Share	Rs (in Figures)	
		Rs (in words)	

Note :-

1. All the terms and conditions related to the concession fee shall be as per the terms and conditions specified in the concession agreement.
2. Revenue Share @ 5% of the Total Turnover shall be retained by CWC and the rest shall be released to the concessionaire as per the terms defined in the concession agreement on quarterly basis.
3. In case the actual revenue share @5% on Total Turnover generated by the SPC in the specific Year is lower than the minimum guaranteed revenue share, the differential amount shall be retained by CWC along with the Revenue Share @ 5% of total Turnover in the following quarter.
4. **“Total Turnover”** shall mean the aggregate of all revenue earned from the operations or directly attributable to the project.

Explanation: For the removal of doubts, it is clarified that any amount charged by the concessionaire to the users in relation to the project, whether or not such revenue is actually realized from the users, shall form part of the Total Turnover.

Provided however that any income earned from the following activities shall be excluded from the computation of Total Turnover:

- i. income from investing surplus funds by the concessionaire;
- ii. income from any other investments not directly related to the project;

5. Provided also that notwithstanding anything contained in this Agreement the Total turnover shall not include taxes or charges collected by the concessionaire from the users of the services and paid or remitted to the authorities concerned. In the event there is any delay in payment of any instalment of the Concession Fee in accordance with the time of schedule of payment as mentioned in RFP and the terms of the LoA and/ or the Concession Agreement, the Concessionaire shall be unconditionally liable for such delay and shall be irrevocably liable to pay to CWC, an interest 3% higher than the Prime Lending rate (PLR) on outstanding payment of Concession Fee.
6. All applicable taxes including GST as applicable shall be payable extra by the bidder.
7. The financial proposal shall only be uploaded online, any information related to financial proposal incorporated in the technical proposal shall lead to disqualification of the bidder.

Date: _____

Place: _____

Signature of Authorised Signatory of the Bidder
(Name, Designation, Address)

Company Seal/ Seal of the Bidder

SCHEDULE – I: Layout plan of the Site
To be provided separately

**SCHEDULE-II : Proforma For Information Of Work Experience
Certificate To Be Furnished By The Tenderer
(from each concerned parties.)**

This _____ istocertifythat _____ M/s _____
_____ have or
keda.....fortheworksof..... and their performance was found
satisfactory. The details of workcarriedbythemareas under:

S. No	NameofClient/cust omerserved	Nature ofthe work/contract executed	Contractsta rtdate	ContractCompl etiondate	Totalvalue ofwork/contract executed	Rema rks
1.						
2.						
3.						
GrandTotal						

Date:

Signature:

**(Name&DesignationofSigningAuthori
tySealoftheCompany/Organization)**

Note:

1. CertificateissuedfromPrivateOrganizationshallbesupportedby**TDS certificate**.
2. *Experiencecertificateofcontractnotcompletedsatisfactorilyshallnotbeconsideredforqualification)*

SCHEDULE-III : Undertaking For Sole Proprietary Firm

I,.....R/o.....
..... do hereby Solemnly affirm and declare as under:-

1. That I am Sole Proprietor of _____ (Sole Proprietor Firm Name)

2. That the office of the firm is situated at

Place:

Date:

(Authorised Signatory)

RFP Part II:
LETTER OF AWARD

RFP PART II: LETTER OF AWARD

Ref No:

Place:

Date: DD.MM.YYYY

To,

[Company]Details of the Successful Bidder

Kind attention: (Name of the Authorised person of the Successful bidder to be added)

Dear Sir/ Madam

**Sub:Development of the Warehouse Facility through PPP under DBFOT model
at <Name of the location will be added along with the area at the time of
issuance>**

LetterofAward

1. WererefertotheBiddated DD.MM.YYYY includingtheFinancialBidssubmittedbyyouinresponseto ourRequestforProposal(RFP)dated DD.MM.YYYY andotherdocumentsconstitutingtheBidding Documents.
The capitalized terms used herein shall have the same meaning as set forth in the draft ConcessionAgreement to beexecutedinpursuance oftheRFPdocument and thisLetterofAward.
2. We are pleased to inform you that your above-referred Bid including the Financial Bid has beenaccepted by the Authority and you are being issued this Letter of Award subject to the followingtermsand conditions:
 - a. As per your Financial Bid dated DD.MM.YYYY, the Concession Fee of the highest bid submitted by you is INR _____ (the "Concession Fee"). Agreement and shall be payable in accordance with the Bidding Documents and revisionsthereof.
 - b. You, as the "Selected Bidder", shall provide the following within 45 (forty-five) days oftheissue ofthis "Letter ofAward":
 - i. You/SPC are hereby requested to acknowledge the acceptance of the Letter of Award ("LoA") within 7 (seven) days of the receipt of this LoA. Each Concession Fee shall be due and payable within the stipulated period or within the extended time period, together with interest (including interest for the extended time period as specified in the Concession Agreement), although the first annual Concession Fee is to be paid by you, the Successful Bidder, without any interest liability on the Successful Bidder, within 45 days (Forty Five) from the date of issuance of this LoA to CWC (LoA date is inclusive).
 - ii. Certificate of Incorporation of the Special Purpose Company (SPC) formed

for the purpose of entering into the Concession Agreement with the Authority along with Memorandum and Articles of Association of the SPC.

- iii. Carry out, with Authority, on a mutually agreed date and time, an inspection of the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Site.
- c. Performance Security of Rs. _____ in the form of an unconditional and irrevocable Bank Guarantee in local currency issued by a scheduled bank as per Concession Agreement.
- d. Please take note that the LoA, does not grant or vests any ownership rights and/ or possession rights over the Site in favour of the Successful Bidder in any manner whatsoever, and CWC will continue to have complete ownership of the Site/Facility. However, the Corporation will hand over the Site to the Concessionaire on appointed date as specified in the concession agreement, for the Concession Period of 45 (Forty-Five) years as per the terms and conditions of the concession agreement, for the specified scope and obligation mentioned in the Concession Agreement. Further, the Concessionaire will hand over the Site/Facility to the Corporation without any encumbrance or financial liability at the end of the concession period.
- e. The SPC shall sign the Concession Agreement with the Authority subsequent to the fulfilment of terms stated in Paragraph 2 (b) of the LOA and in accordance with the terms and conditions of the Bidding Documents. You/SPC shall ensure that the Agreement is signed not later than 45 (forty-five) days from the issuance of this "Letter of Award". You/SPC shall incur the duties, levies and taxes applicable for the execution of the Agreement.
- f. Further, in case you fail to submit your acceptance within stipulated time or any extended period if agreed upon by CWC or refuse the acceptance of the aforesaid Agreement under this LoA, CWC at its discretion take necessary action as deemed fit including forfeiture of EMD, backlisting etc.
- g. You/SPC shall comply with all the terms and conditions of the Bidding Documents.

It may also be kindly noted that in the event you fail to comply with any one or more of the terms and conditions mentioned in the Bidding Documents, within the time period and in the manner prescribed therein, we, in addition to all other rights and remedies that may be available to us under the provisions of the RFP document and the applicable laws, shall be at absolute liberty and freedom to treat your Bid as rejected and deal with the captioned Project as we may deem fit in our absolute discretion.

You are requested to convey in writing, your acceptance of this Letter of Award within 7 (seven) days from the date of its issuance.

We look forward to an early compliance of the above-mentioned requirements by you.

General Manager (NBP&P)
Central Warehousing Corporation

Acknowledged & unconditionally accepted:

[Name of the Successful Bidder]

[Designation]

[Company]

RFP PART III: CONCESSION **AGREEMENT**



CENTRAL WAREHOUSING CORPORATION

(A Govt. of India Undertaking)

PUBLIC PRIVATE PARTNERSHIP (PPP)

IN

**Development of the Warehousing Facility through
PPP under DBFOT model at
<Name of the Location/Facility>**

CONCESSION AGREEMENT

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PART – I
PRELIMINARY

CONCESSION AGREEMENT

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

BETWEEN

- 1 **THE CENTRAL WAREHOUSING CORPORATION**), a Central Public Sector Enterprise (CPSE) established under Warehousing Corporation Act 1962, under the aegis of Ministry of Consumer Affairs, Food and Public Distribution and having its offices at [•], represented by [•] (hereinafter referred to as the “**Authority**” or “**CWC**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns) of One Part.

AND

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

The **Authority** and the **Concessionaire** shall collectively be referred to as “**Parties**” and individually be referred to as “**Party**” as the case may be.

WHEREAS:

- A. In order to Design, Build, Operate & Manage its Warehouse Facility, the Central Warehousing Corporation (CWC) intends to offer their existing facilities in India for private sector participation at various locations across the Country.
 - B. In furtherance to this, the Authority has resolved to Design, Build, Operate & Manage such Warehouse Facility [•] in district [•] in the State of [•] on Design, Build, Finance, Operate and Transfer (“DBFOT”) basis in accordance with the terms and conditions set forth in this Agreement.
 - C. The Authority had accordingly invited proposals by its Request for Proposal dated ***** (the “Request for Proposal” or “RFP”) for selection of bidder to Design, Build, Finance, Operate, Maintain and Transfer the Project at the identified location on a PPP basis.
 - D. After evaluation of the bids received, the Authority had accepted the bid of the {successful bidder/Consortium}- comprising ***** and ***** (collectively the “Consortium”) with ***** as its lead member (the “Lead Member”) and issued the Letter of Award No. ***** dated ***** (hereinafter called the “**LOA**”) to the {selected bidder/Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (Forty-Five) days of the date of issue thereof.
- 3 {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a company under the Companies Act 2013 with CIN***** , and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
 - 4 {By its letter dated ***** the Concessionaire has also joined in the said request of the selected bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/Consortium including the obligation to enter into

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this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/Consortium, only for the purposes hereof}.

- 5 The Authority has {agreed to the said request of the selected bidder/Consortium and the Concessionaire and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.
- 6 If at any time during the Term, the Authority/ CWC is converted into a ‘Company’ under the provisions of the Companies Act 2013, the provisions of this Agreement shall apply *mutatis-mutandis* to the Parties and/or the Authority/ CWC, wherever they are applicable upon them collectively and individually.

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

ARTICLE 1-DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 47) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) references to “**development period**” is 5 years from Appointed Date for augmentation and development of the Project.
- (i) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (j) any reference to a 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 the State are generally open for business;
- (l) any reference to a month shall mean a reference to a calendar month as per the Gregorian calendar;

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at <Name of the Location/ Facility>*

- (m) any reference to any period commencing “**from**” as specified day or date and “**till**” or “**until**” as specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any genders shall include the other and the neutral gender;
- (p) “**Lakh**” means a hundred thousand (100,000) and “**Crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**” or “**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;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as a reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of Authority hereunder or pursuant thereto in any manner whatsoever;
- (t) 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 Expert 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 Expert, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of this Agreement, and reference to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Expert shall be provided free of cost and in three copies, and if the Authority and/or the Independent Expert 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 thereof or referred to herein shall, in the event of any conflict between them, be in the following order:

- (a) this Agreement; and
- (b) all other agreements and documents forming part thereof or referred to herein;
- (c) i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

Part II The Concession

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ARTICLE 2 - SCOPE OF THE PROJECT

2.1 Scope of the Project

- 2.1.1 The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period:
- (a) Planning, Design, Financing and Construction of the Project on the Site set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of the Project Assets in conformity with the Specifications and Standards and other provisions of this Agreement;
 - (b) Operation and Maintenance of the Project in conformity with the Specifications and Standards, and other provisions of this Agreement;
 - (c) provide Services in conformity with the Specifications and Standards, and other provisions of this Agreement;
 - (d) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

ARTICLE 3-GRANT OF CONCESSION

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practice, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and authority to Design, Finance, Construct, Operate and Maintain the Project at the Site (the "Concession") and provide Services for a period of 45 (Forty-Five) years, commencing from the Appointed Date and ending on the Transfer Date, including any extension thereto as may be granted by the Authority as per the terms of this Agreement (the "Concession Period"), which includes construction of the Project Assets and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement. The Concessionaire agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall entitle and oblige the Concessionaire to undertake the following in accordance with the provisions of Applicable Laws and Applicable Permits, during the Concession Period to:
- (a) Right of Way, access, and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) Plan, Design, Develop, Procure, Construct, Finance, Upgrade, Equip, Operate, Maintain and manage the Project Asset/Facility as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice and transfer the same to the Authority or designated Government agency on the Transfer Date;
 - (c) Operate, Manage, and Maintain the Facility and regulate the use thereof by third parties;
 - (d) Demand, Collect and appropriate, on behalf of CWC, Fee from Users liable for payment of Fee for using the Facility and/or availing any Services or any part thereof and refuse entry to any User if the Fee due is not paid;
 - (e) Pay Concession Fee and receive revenue in accordance with Article 23 (Concession Fee), as consideration for undertaking this Project;
 - (f) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
 - (g) provide Services to the Users and/or any other service providers as per the terms and conditions of this Agreement including Specifications and Standards, Good Industry Practice and Applicable Law;
 - (h) bear and pay all costs, expenses, and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement;
 - (i) access the common areas, facilities, and infrastructure at the Site, as long as such right to access is limited to the extent that it is required for Design, Build, Operating and Maintaining the Project and/or providing Services under this Agreement;
 - (j) neither assign, transfer, or create any lien or Encumbrance on this Agreement, or the Concession hereby

granted or on the whole or any part of the Project nor sell, transfer, exchange, lease, sub-license or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

- 3.1.3 Upon the termination of this Agreement, either due to expiry of the Concession Period or due to any other reason, the Concessionaire shall comply with obligations provided in Article 32.

3.2 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organization or restructuring undertaken in pursuance of Applicable Laws or in the event the ownership of the Facility is transferred from the Authority to any other public entity, substitute itself by any other public entity having the capacity to undertake and discharge the duties and obligations of the Authority with a similar or greater creditworthiness, and upon such substitution, all the functions, rights and obligations of the Authority under this Agreement shall be deemed to be transferred to the substituted entity in accordance with and subject to Applicable Laws; provided, however, that prior to any such substitution, the Parties shall, on a best endeavor basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder.

3.3 Extension of Concession Period

In the event that extension of the Concession Period shall have become due under and in accordance with the provisions of this Agreement, the Concessionaire shall apply to the Authority forthwith for extension of the Concession Period in accordance with the provisions of this Agreement. For the sake of clarity, it is understood, agreed, and acknowledged by the Parties that the maximum extension of the Concession Period shall not, under any circumstances, be more than 10% (ten percent) of the Concession Period in aggregate. The Concessionaire agrees and acknowledges that any and all provisions of this Agreement relating to grant of extension in the Concession Period by the Authority shall always be deemed to be subject to the limitation and restriction prescribed by this Clause 3.3.

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, 25, 33, 37 and 40, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon fulfilment of its Conditions Precedent in accordance with Clause 4.1.3, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day 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 45 (forty five) days of the notice, or such longer period not exceeding 90 (ninety) 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:
- (a) provided to the Concessionaire the Right of Way, access, leave and license rights to the Site; Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 120 (one hundred and twenty) days, for fulfilment 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 120 (one hundred and twenty) 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 Substitution Agreement;
 - (b) procured all the Applicable Permits specified in Part-A of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled shall have been satisfied in full and such Applicable Permits are in full force and effect;
 - (c) executed and procured execution of the Escrow Agreement;
 - (d) procured, installed and integrated with CWC’s accounting software, the billing software for the Project as per provisions of Clause 17.9;
 - (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (f) delivered to the Authority from {the Consortium Members} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
 - (g) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof;
- Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3.
- 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 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 shall, 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 Site. However, the Concessionaire may prior to the Appointed Date, subject to prior written approval from the Authority, undertake shifting of obstructing utilities at the Site and/or cutting of trees as set forth in Article 11.

4.3 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2 and 4.3, and subject to the provisions of Clause 9.3, the Parties expressly agree that in the event the Appointed Date does not occur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority and such amount is agreed to be the genuine pre-estimate of the loss caused to the Authority by the Concessionaire, on account of such delay.

ARTICLE 5-OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and take reference to the Layout Plan as specified under Schedule – B, Annexure - II and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

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

5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4 The Concessionaire shall, from time to time, undertake expansion or augmentation of the Project Assets in accordance with the provisions of this Agreement and Good Industry Practice

5.1.5 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 including that of railways, customs, etc., except for property tax in respect of the Project, Services and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality.

All or any statutory charges, including property tax, paid by the Authority in respect of the Project Site/ Project Facilities (including those created or developed by the Concessionaire), shall be reimbursed by the Concessionaire to the Authority, on the failure of which, the same shall be treated as the Concessionaire Default in terms of this Agreement.

5.1.6 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 Governmental Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits for the construction, commissioning and operating the Facility, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project perform and fulfil its obligations under all the Financing Agreements executed for development of the Project.

(c) 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;

(d) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

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

(f) procure that all facilities and amenities within the Project are operated and maintained in

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- 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;
- (g) ensure that Users are treated with due courtesy and consideration and provided with ready access to Services and information;
 - (h) provide, or cause to be provided, Services in accordance with the provisions of this Agreement and Applicable Laws;
 - (i) procure the temporary supply of electricity during the Construction Period to the Project from the grid, including procuring standby arrangements for supply of electricity for maintenance of Services in the event of outages or failure of electricity supply from the grid;
 - (j) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
 - (k) transfer the Project Assets to the Authority upon Termination/Expiry of this Agreement, in accordance with the provisions thereof;
 - (l) procure, as required, the appropriate utilities and Services required or used for the Project;
 - (m) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, documents relating to the Project, and Change of Scope Order and other communications given under this Agreement. The Authority's representative and its authorised personnel shall have the right of access to all these documents at all reasonable times;
 - (n) cooperate with authorized representative of the Authority and personnel of any public Authority;
 - (o) not interfere unnecessarily or improperly with the convenience of the public, the Authority and its representatives, employees, agents etc.;
 - (p) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project Assets;
 - (q) construct and make alterations or additions to the building/structure/installations on the Site at its own cost after prior written approval of the Authority and strictly in accordance with the sanction and approval of the concerned local authority or of any other authority, the approval of whom has been mandated under the law for the time being in force. Such alterations shall not compromise the safety aspects.
- However, the Concessionaire shall be at liberty, after giving prior written intimation to the CWC to undertake minor modifications / alterations within the industrial structure / building (for the sake of clarity, no structural modifications / alterations shall be undertaken without prior written approval of the Authority) subject to approvals and permissions as may be required as applicable.
- (r) at its own cost, provide and install the furniture, equipment, fixtures and things necessary for implementing the Project;
 - (s) at its own cost bear the cost of developing and maintain roads inside the Facility boundary to achieve seamless connectivity of the Facility with external road connectivity;
 - (t) bear and pay all the existing and future rates, Taxes, levies, duties, cess and charges of whatsoever nature in respect of the Project throughout the term or the extended term of the Concession Period to CWC, if any;

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- (u) provide the Project security arrangements on round the clock basis and shall maintain and run the Project in accordance with Good Industry Practice;
- (v) maintain the Site and structure/installations/fixtures in good conditions and order to the satisfaction of the Authority and as per the terms of this Agreement and also abide by the directions given by the relevant departments as may be entrusted with the enforcement of rule and regulation regarding labour safety, health sanitation, cleanliness and hygiene;
- (w) not store any hazardous or explosive substance on the Site unless specific license is obtained from the regulatory body after taking prior consent from the Authority. The Concessionaire shall provide and maintain necessary fire-fighting and fire protection systems in the Site as per the Applicable Law
- (x) observe and perform all the terms, covenants, conditions and stipulations contained herein and shall not do, omit or suffer to be done any act, deed or thing whereby Authority's rights with respect to the Facility, the asset therein or any part/portion of the Facility in any way prejudiced, affected or extinguished;
- (y) use the Site or any premises erected thereupon for the exclusive purpose of providing the Services to the users of the Facility ("Users") and bonafide visitors to the Site.

5.2 Obligations relating to Change in Ownership

- 5.2.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior written approval of the Authority.
- 5.2.2 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 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
 - ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him, shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire. The Concessionaire undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon no later than 30 (thirty) days from the date of receipt of request for approval appended with all the necessary and required details. 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 Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

- (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.2.3 Upon the expiry or earlier termination of the Concession Period, the Concessionaire shall handover to the Authority the peaceful and vacant possession of the Site including the structure / installations / fixtures erected or installed on the same. Failure to handover the same within a period of 7 (seven) days of the expiry or earlier termination of the Concession Period would make the Concessionaire liable for payment of penalty equivalent to 1% (one per cent) of the last annual Concession Fee per day up to a maximum of 15 (fifteen) days, after which the Authority shall be entitled to enter upon and take possession of the Site including the Project on a *vis-à-vis* basis.

5.3 Employment of trained personnel

The Concessionaire shall recruit and manage all the personnel required to perform each step/ component of the Services.

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 in accordance with the Applicable Laws.

The Concessionaire shall adopt an effective human resources policy in accordance with the Applicable Laws.

The Concessionaire shall appoint suitable officers/staff/representative to work and supervise the Project and to deal with the Authority.

The Concessionaire shall be responsible to provide requisite training to its personnel at the Project, from time to time.

The Concessionaire shall ensure:

- (a) the compliance of all Applicable Laws and Specifications and Standards by all the Contractors and sub-contractors;
- (b) that the staff and attendants employed at the Project are trained as per the requirements of the Applicable Laws in performing the Services;
- (c) that its personnel are courteous and helpful to the Users.

5.4 Branding of the Site

The Concessionaire shall maintain a high standard in the appearance and aesthetic quality of the site through both appropriate design and sensitive management of all visible elements.

The area near entrance & exit gates of the site or any part thereof are permitted to advertise, display or reflect the name or identity of the Concessionaire or any other entity along with the 'name or

brand',The Concessionaire shall ensure that the branding of the site shall not trigger any 'political sentiments'and/or'religious sentiments'andshall abidebythe extant policyinthis regard.

5.5 Facilitiesfordifferentlyabledandelderlypersons

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 thedifferentlyabledandforelderlypersonsusingtheFacility.

5.6 Personnelengagedbythe Concessionaire

The Concessionaire shall ensure that the personnel engaged by the Concessionaire or any of its agencyin the performance of its obligations under this Agreement are at all times appropriately qualified,skilled,andexperiencedin theirrespectivefunctionsinconformitywithGoodIndustryPractice

5.7 Risksand ResponsibilityfortheProject

The Concessionaire shall bear full risk and take full responsibility for the care of the Project, and of theMaterials, goods and equipment for incorporation therein, from the date of signing of this AgreementuntilthedataofhandingovertheProjecttotheAuthority.

Except as otherwise stated in this Agreement, the Concessionaire accepts complete responsibility forhavingforeseenalldifficultiesandcostsofsuccessfullycompletingtheProject.

5.8 Obligationsrelating tosecurityclearance

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees,staff and personnel of the Concessionaire and of its Contractors and subcontractors shall always besubject to Applicable Laws. For the avoidance of doubt, it is agreed that refusal of or inability toobtainany such permits and approvalsby the Concessionaire or any of its Contractors orsub-contractors shall not constitute aForce Majeure Event, and shall not in any mannerexcuse theConcessionairefromthepformanceanddischargeofitsobligationsandliabilitiesunderthisAgreement.

5.9 Obligations relatingtotaxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, save and except the property tax (which shall be reimbursed by the Concessionaire to the Authority, as stated above),all taxes, levies,duties, cesses and all other statutory charges, dues, assessments, or outgoings payable in respect of theProjectFacilities to CWC.

5.10 Accidents

In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform theconcernedcivil&policeauthoritiesandthe Authority.TheConcessionaire's responsibilitieswithregardtotheconstructionandoperationoftheProjectshallinno waybediminishedby informingthe above officials, and the Concessionaire shall be required to take expeditious action for the medical andlegal aspects notwithstanding any delay onthe part of the officials to give any instructions. TheConcessionaireshallpreservetheSiteofsuchaccidentintactuntilthecompletionofalllegalformalities. The Concessionaire shall then arrange for the expeditious removal of wreckage or debris,and for cleaning the Site. If any portion of the Project Assets suffers any damage, the Concessionaireshall, withthe consent of theAuthority,arrange forthe repair and rectificationthereof within areasonabletimeasmaybeagreedbytheParties.

The Concessionaire shall keep the Authority indemnified against all damages on account of any accident and shall incur the sole liability for the same, as the operator of the Project Facilities.

The Concessionaire shall, in event of any accident, incur any expenditure or take any other action as necessary, in accordance with Good Industry Practice.

5.11 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 Facility and its impact on Users and the neighborhood.

5.12 Obligations relating to management of the Concessionaire

The management of the Concessionaire shall be carried out as per and in compliance with the Applicable Laws, directions issued by the Authority in terms of this Agreement/any regulatory body from time to time and/or in compliance with provisions of the Companies Act, 2013 and its amendment(s) from time to time. It shall be the sole and absolute responsibility and obligation of the Concessionaire to remain in compliance and strict adherence with all the Applicable Laws/ directions from the Authority in terms of this Agreement / regulatory body and/or in compliance with provisions of the Companies Act 2013 and its amendments from time to time and the Authority shall not be held responsible or liable for any breach or non-compliance of the same by the Concessionaire.

5.13 Intellectual Property Permits

The Concessionaire shall ensure that if any equipment, designated devices, materials or any process are covered by Intellectual Property Rights, the right for such use shall be secured by the Concessionaire by suitable legal arrangements and agreements with the Intellectual Property Rights owner or person empowered to assign the Intellectual Property Rights. A copy of each such agreement shall be filed with the Authority.

5.14 Water and Electricity

- 5.14.1 The Concessionaire shall be responsible to procure power, water, and related back-up systems at the Project to maintain uninterrupted power and water supply at all times, including Construction Period.

The Concessionaire shall, on and before the Provisional COD, set up a meter at its own cost to measure the power and water consumption. During the Project construction and operation, the Concessionaire shall pay all the invoices relating to water and electricity connections, running charges as and when due. For the avoidance of doubt, it is agreed that the Concessionaire shall install its own sub-station and related utilities for steady supply of electricity and water as may be necessary for construction and operation of the Project.

- 5.14.2 The Authority shall not be responsible for interruptions and/or insufficiency of power or water supply and the Concessionaire shall directly deal with the concerned agency responsible for supply of power and water.

5.15 Obligations relating to procurement of goods and services

- 5.15.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the Facility in a fair, transparent, and efficient manner, and without

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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 place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for sub-licensing or grant or allocation of any space, building, rights, or privileges to private entities.

5.16 Obligations relating to medical aid

For providing emergency medical aid to Users, the Concessionaire shall set up and operate a medical aid post at the Facility equipped to render first aid and to assist in accessing emergency medical aid from hospitals in the vicinity.

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, to 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 Applicable Laws, the following:-

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits, required from any Government Instrumentality for implementation and operation of the Project;
- (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (c) pay property tax in relation to the Site on which it is established;

Explanation:- All or any statutory charges, including property tax, paid by the Authority in respect of the Project Site/ Project Facilities (including those created or developed by the Concessionaire), shall be reimbursed by the Concessionaire to the Authority, on the failure of which, the same shall be treated as the Concessionaire Default in terms of this Agreement.

- (d) subject to and in accordance with Applicable Laws, grant to the Concessionaire the authority to regulate use of the Project;
- (e) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (f) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (g) provide to the Concessionaire, upon receiving the Performance Security under Clause 9.1, the Site in accordance with the provisions of Article 10;
- (h) Provide access to, as shown in the project map attached in Schedule A, to the Facility as shown in attached in Schedule B;
- (i) subject to the Concessionaire complying with Applicable Laws, by making requisite applications, provide reasonable assistance to the Concessionaire in procuring electricity supply within the Project;
- (j) provide to the Concessionaire the Right of Way, access, leave and license rights to the Site in accordance with the provisions of Article 10;
- (k) provide complete access to the Site free of encumbrance, including right to use for the purpose of maintaining telephone lines, electricity lines, water piping or for such other public purpose as the Concessionaire may require, but the charges for the use of such utilities shall be incurred by the Concessionaire;

- (1) uponwritten requestfrom the Concessionaire, and subjectto the Concessionaire complyingwithApplicable Laws, and subject to the applicable guidelines issued by Government of India, from time totime,facilitate and provide reasonable support to the Concessionaire in procuring statutory approvalsforsettingupofcustomfacilitiesinthe Facility;

6.2 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaire to secure refinancing, 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 to be utilized for the Project purpose only ; provided that it shall not have the effect of increase in financial liability or obligations on the Authority and it shall not jeopardize the interest of the Authority in any manner, and shall always be subject to the prior approval of the Authority, which 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 Authority, but the repayment thereof shall be completed no later than 2 (two) years prior to expiry of the Concession Period.

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 organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of 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 legal 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.

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- (l) the {successful bidder/ Consortium Members and its/ their} and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement.
- (m) {The successful bidder / each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (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 Authority in connection therewith;
- (q) The Concessionaire shall procure and furnish to the Authority the confirmation from the “successful bidder/Consortium Members” to the effect that all information provided by the {successful bidder/Consortium Members} in response to the Request for Proposal or otherwise, is to the best of their knowledge and belief, if true and accurate in all material respects.
- (r) all undertakings and obligations of the Concessionaire arising from the RFP or otherwise shall be binding on the Concessionaire as if they form part of this Agreement
- (s) it shall remain solely liable to perform its obligations under this Agreement as well as ensure performance of obligations by its sub-licensees, lessees, Contractors/Sub-Contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Concessionaire’s Contractors/Sub-Contractors, designers, consultants or agents in any manner whatsoever.
- (t) It shall promptly inform the Authority in writing before initiating any of the following (including any matter incidental or consequential thereto) and give due consideration to the recommendations or suggestions, if any, made by the Authority in respect thereof:
 - (i) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
 - (ii) for various other matters pertaining to the winding up of the Concessionaire;

However, the Authority shall not be liable or responsible or incur any liability of any nature arising out of, directly or indirectly, pursuant to any of the above actions taken by the Concessionaire.

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 Applicable Laws to authorize the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects;
- (g) it has the right, power and authority to manage and operate the Facility up to the Appointed Date; and
- (h) it shall procure good and valid title of the land and has power and authority to grant a license in respect thereof 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, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, availability of construction material and resources, railway connectivity, availability of electricity and water, business potential and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to 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, assumptions, 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.
- 8.1.6 The Concessionaire acknowledges and hereby accepts to have satisfied itself as to the sufficiency and correctness/acceptability of the Concession Fee.

**Part III Development
and Operations**

DRAFT

ARTICLE 9 - PERFORMANCE SECURITY

9.1 Performance Security

The Concessionaire shall have provided to the Authority prior to the signing of this Agreement, an irrevocable and unconditional guarantee from a Scheduled Commercial Bank for a sum equivalent to 2 (Two) times of the Minimum Guarantee Revenue Share Amount¹ i.e., Rs. _____ (Rupees _____) in the form set forth in Schedule-F (the "Performance Security"). Until such time the Performance Security has been provided by the Concessionaire to the Authority in full, the Earnest Money Deposit (EMD)/Bid Security shall remain in full force and effect with the Authority. Only upon the full realisation of the Performance Security, shall the Authority release the Earnest Money Deposit (EMD)/ Bid Security to the Concessionaire.

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 the relevant amounts from the Performance Security as Damages for such Concessionaire Default or for failure to meet any Conditions Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level 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 36. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 36.

9.3 Release of Performance Security

The Performance Security shall remain in full force and effect for the entire Concession Period, including any extensions thereto as per clause 3.3, and for a further period of 1 (One) year from the Transfer Date.

9.4 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 by the Concessionaire to the Authority, or in respect of any period subsequent to the expiry or release thereof, as the case may be, shall be construed solely for the purposes of calculating the amount of Damages payable by the Concessionaire.

¹ As quoted by the Selected Bidder in the Financial Bid

ARTICLE 10-SITE & RIGHT OF WAY

10.1 The Site

The site of the Project shall comprise of the land area 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**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land area required for the Project as set forth in **Schedule-A**,

10.2 License, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant thereto in the event of Termination or otherwise. The Concessionaire acknowledges that the condition of the Site is no inferior to the condition as it was on the date of Bid Due Date.
- 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 license rights in respect of all the land along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all lands 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 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination/expiry of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensee(s)/Contractor(s)/Sub-Contractor(s), agent(s), representative(s) the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.4 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.
- 10.2.5 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.
- 10.2.6 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing roads within the Site or an alternative thereof are open to traffic at all times during the Concession Period.

10.3 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Concessionaire pursuant thereto 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 or physical condition of the Site.

If the concessionaire intend to develop the facility in phased manner and retain the existing clients/depositors/users of the facility, they may enter into such arrangement by themselves however the same shall be informed to CWC in advance.

10.4 Protection of Site from encroachments

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

10.5 Special/temporary right of way

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

10.6 Access to the Authority, Authority Representative and Independent Expert

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

10.7 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Government or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions

to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. The Parties further agree as under:

- (i) The Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period and to the extent permissible under the Applicable Law so as to enable the Concessionaire to continue its Construction Works for development of the Facility with such modifications as may be deemed necessary;
- (ii) In case any portion of the Site becomes unavailable for development and implementation of the Project on account of archaeological and / or geological finds, at any time during the Concession Period, the Authority and Concessionaire shall mutually discuss the matter to arrive at a mutually acceptable resolution;
- (iii) However, if on account of any archaeological or geological finds:
 - a) the entire Site, going forward, becomes unavailable for the Project; or
 - b) the Concessionaire and Authority are unable to arrive at a mutually acceptable resolution pursuant to subclause 10.7(ii) above, in spite of all reasonable endeavours

In such an event the Concessionaire shall be under an obligation to forthwith, upon written notice and demand, in this regard, from the Authority to peacefully and unconditionally vacate and hand over the Site to the Authority and the Concession Agreement shall be deemed to stand terminated, with mutual consent on and with effect from such date as may be specified by the Authority in the notice. In such an eventuality, the Concessionaire shall be entitled to receive Termination Payment in accordance with Clause 33.9.1.

10.8 Acceptance of Site for Project Development

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

- (a) inspected the Site, including all structures thereat and its surroundings;
- (b) satisfied itself as to the nature of the climatic and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and
- (c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances including contingency under Clause 10.7 above, which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

ARTICLE 11- UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 Utilities required for Project

11.3.1 The Concessionaire shall, subject to applicable laws and with assistance of the Authority, undertake construction of any utilities required for construction, maintenance and operation of Project, including electrical lines, water pipelines, telephone lines, waste disposal lines, etc. at his own cost. These utilities shall also include any external connections except water and power.

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

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause material adverse effect on construction, operation, and maintenance of the Project. The Concessionaire shall be responsible for cutting of the trees along with transplant / replantation as per the applicable law. The cost of felling of trees and transplant / plantation shall be borne by the Authority. 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-DESIGN AND CONSTRUCTION OF [THE PROJECT]

12.1 Construction of the Project

- (a) The Concessionaire shall undertake construction of the Project, on the land specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes with the right to sub-license any or all parts thereof by means of Project Agreements in accordance with the Concessionaire's scope of work under and in accordance with the terms of this Agreement.
- (b) The Concessionaire shall undertake or cause to be undertaken at its cost and in accordance with the provisions of this Agreement, Applicable Laws and Good Industry Practice, the development and maintenance of infrastructure such as internal roads, electric supply, water supply, sewerage and drainage system etc. in the site and to the site, forming part of the Project.

12.2 Obligations prior to commencement of construction

12.2.1 In addition to obligations and conditions specified hereinabove, prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Expert its detailed conceptual plan, layout plan, detailed design, engineering drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-I;
- (b) appoint its representative duly authorized to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for procurement of materials needed for the Project under and in accordance with Applicable Laws and Applicable Permits.

12.3 Non-Obstruction - on Highway or of Traffic

The Concessionaire shall ensure that its Construction Works do not obstruct, interrupt, or divert the flow of traffic on the Highway **on which the Project is situated that would** otherwise impede smooth traffic flow on the Highway. For the avoidance of doubt, it is agreed that the Concessionaire shall at times be responsible for ensuring safe operation of the Project.

12.4 Drawings

12.4.1 In respect of the obligations relating to the Drawings of the Project as set forth in Schedule-G, the following shall apply:

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of detailed conceptual plan, layout plan, detailed architectural and structural designs, engineering drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule (as required for proper execution and completion of the Project as envisaged by the Authority) in relevance to layout provided by Authority and all Drawings to the Independent Expert for review;

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- (b) By submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the site-specific design and engineering, including the field construction criteria related thereto, are in conformity with the Specifications and Standards; Applicable Laws and Good Industry Practice
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert 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 Expert on the Drawings submitted pursuant thereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Expert 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 Expert for review. The Independent Expert shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Expert 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 Expert or the Authority be liable for the same in any manner;
- (f) Without prejudice to the foregoing provisions of this Clause 12.4.1, the Concessionaire shall submit to the Authority for review and comments, its Drawings including location and layout (as required for proper execution and completion of the Project as envisaged by the Authority), 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 the Clause 12.4.1 shall apply mutatis mutandis to the review and comments hereunder.
- (g) Within 90 (ninety) days of Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed and developed, including an as-built survey illustrating the layout of the and set back lines, if any, of the buildings and structures forming part of Project Facilities.
- (h) The Concessionaire shall at its cost, charges and expenses, prepare the Structural Designs and engineering Drawings in conformity with the Scope of the Project, Specifications and Standards and other provisions of this Agreement, with due approval from Authority (based on I E recommendation)
- (i) Based on the approved detailed conceptual plan (as per Clause 2.1(a)) design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Concessionaire requires any relaxation in design standards due to site conditions, the alternative design, criteria for such sections shall be provided for review of the Independent Expert
- (j) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Authority at its sole discretion may suitably extend the Construction Period or provide other relief for any such delay not attributable to the Concessionaire.
- (k) The Project shall be executed in accordance with the Drawings provided by the Concessionaire

in accordance with the provisions of this Clause 12.4 and the observations of the Authority or Independent Expert hereon as communicated pursuant to the provisions of Clause 12.4. Such Drawings shall be amended or altered with prior approval of the Authority upon recommendation by the Independent Expert. If a Party becomes aware of an error or Defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or Defect and shall cause Suspension of Construction of such part of the Project.

- (l) In the event that the Independent Expert has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Expert with regards to its compliance.

12.5 Architectural Design

- 12.5.1 The Concessionaire shall at all times conform to the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials.
- 12.5.2 The Concessionaire shall, prior to commencement of construction of Project, furnish to the Authority and to the Independent Expert, its architectural drawings in conformity with the Architectural Design. Within 15 (fifteen) days of the receipt of such architectural drawings, the Authority and/ or the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Architectural Design or aesthetic quality thereof and their harmony with the environment. If the aforesaid observations of the Authority or the Independent Expert indicate that the architectural drawings are not in conformity with the Architectural Design or require improvement in aesthetic quality or harmony with the environment, the relevant drawings shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Expert for review. The Authority and/ or the Independent Expert shall give their observations, if any, within 7 (seven) days of receipt of the revised architectural drawings.
- 12.5.3 The Concessionaire shall not be obliged to await the observations of the Authority on the architectural drawings submitted pursuant thereto beyond the period of 15 (fifteen) days from receipt of the architectural drawings by the Authority and may begin Construction Works at its own discretion and risk, after expiry of the said period. For the avoidance of doubt, no review and/ or observation of the Authority or the Independent Expert and/ or their failure to review and/ or convey their observations on the architectural drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Expert be liable for the same in any manner.

12.6 Construction of the New Facility

- 12.6.1 On or after the Appointed Date, the Concessionaire shall undertake the Construction Works in conformity with the Specifications and Standards set forth in Schedule-D and Good Industry Practice. The Concessionaire shall construct, upgrade, install and establish the Project Facilities, including the basic and detailed design, completion, testing and commissioning in accordance with the provisions of this Agreement, including, the Specifications and Standards, Applicable Laws including the applicable architectural controls, building by laws and zoning requirements, terms of Applicable Permit and Good Industry Practice and after obtaining sanction to the building plans etc. with the design plans and specifications from the proper municipal or other Authority, at its own expenses.

Accordingly, the Concessionaire shall undertake the designing, engineering and Construction Works related to the Project.

- 12.6.2 During the Construction Period, the Concessionaire shall carry out or cause to be carried out the

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Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, monitors and Contractors with experience of works similar in scope and nature to that required under this Agreement. The Concessionaire shall design, monitor, and execute the development and implementation of the Construction Works using the best design and monitoring principles and practices. The Concessionaire shall adhere to Construction Quality Plan, and the Specifications and Standards set out therein.

12.6.3 In the event that the development is not completed and Final COD does not occur within 2 (two) years from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.7 Extension of Time

12.7.1 Without prejudice to any other provision of this Agreement for and in respect of extension of time, the Concessionaire shall be entitled to extension of time in the Project Completion Schedule (the "Time Extension") to the extent that the Project is or will be delayed by any of the following reasons, namely:

- (a) delay in providing the right to access the Site or land use conversion certificate;
- (b) Change of Scope (unless an adjustment to the Scheduled Completion Date has been agreed under Article 12);
- (c) occurrence of a Force Majeure event;
- (d) any delay, impediment or prevention caused by or attributable to the Authority, the Authority's personnel or the Authority's other licensees on the Site but does not include the inspection time/review time by the Authority or its representative/personnel;
- (e) any other cause or delay which entitles the Concessionaire to Time Extension in accordance with the provisions of this Agreement

12.7.2 The Concessionaire shall, no later than 15 (fifteen) business days from the occurrence of an event or circumstance specified in Clause 12.7.1, inform the Authority's Representative by notice in writing, with a copy to the Authority, stating in reasonable detail with supporting particulars, the event or circumstances giving rise to the claim for Time Extension in accordance with the provisions of this Agreement. Provided that the period of 15 (fifteen) business days shall be calculated from the date on which the Concessionaire became aware, or should have become aware, of the occurrence of such an event or circumstance.

12.7.3 In the event of the failure of the Concessionaire to issue to the Authority's Representative a notice in accordance with the provisions of Clause 12.7.2 within the time specified therein, the Concessionaire shall not be entitled to any Time Extension and its right for any such claims in future, if any, shall stand forfeited. For the avoidance of doubt, in the event of failure of the Concessionaire to issue notice as specified in this Clause 12.7.3, the Authority shall be discharged from any and all liabilities in connection with any such claim.

12.7.4 The Authority's Representative shall, on receipt of the claim in accordance with the provisions of Clause 12.7.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's Representative requires any clarification to examine the claim, the Authority's Representative shall seek the same within 15 (fifteen) days from the date of receiving such claim. The Concessionaire shall, on receipt of the communication of the Authority's Representative requesting for clarification, furnish the same to the Authority's Representative within 10 (ten) days thereof. The Authority's Representative shall, within a period of 60 (sixty) days from the date of receipt of

such clarifications, forward in writing to the Concessionaire its determination of the claim for Time Extension. Such determination of the claim for Time Extension by the Authority's Representative shall be final and binding on the Parties.

Provided that when determining each extension of time under this Clause 12.7, the Authority's Representative shall review previous determinations and may increase but shall not decrease the total Time Extension.

12.8 Sub-licensing of the Project

12.8.1 Subject to the provisions of Clause 24.5 and this Article 12, and with the prior approval of the Authority, Concessionaire may sub-license part of the Project Assets comprising the Project, such that the period and validity of such sub-licenses shall not extend beyond the Concession Period.

The Concessionaire shall ensure that none of the provisions of the sub-license agreements are contrary or inconsistent with the provisions of the Concession Agreement and/or creating any liability, of any nature, upon the Authority.

It is clarified that primary responsibility of ensuring that such Project Agreement is not contrary or inconsistent with existing provision of Concession Agreement will rest with Concessionaire.

12.8.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 12.8.1, the Concessionaire or the sub licensee shall not assign or in any manner create an Encumbrance on any Project Asset forming part of the Project without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 12.8.2 within a period of 60
(sixty) days from the date of receiving a notice with required particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

12.8.3 The Concessionaire agrees and undertakes that in respect of any sub-license, or assignment on any Project Asset, it is entitled to receive a monthly fee, charge, rent or revenue share as the case may be.

In addition, if any amount to be accepted or demanded, whether by way of security, deposit, advance or under any other head whatsoever, the same shall be received in the name of the Authority and shall be deposited by the Concessionaire with the Authority only in respect of such sub-license or it should be deposited in the Escrow Account to be kept in separate sub-account which will be utilized only and only as and when the same is required to be returned on conclusion of sub-license period or earlier if the sub-licensee is terminated on account of any reason.

12.9 Rights of sub-licensees after Termination of Concession Agreement

On termination of Concession Agreement, the sub-licensee (or any occupancy rights by whatever term referred to) shall not have any right whatsoever and will be required to immediately vacate and hand over the possession of the premises to the Authority without any claim.

12.10 Compliance with Applicable Laws

The Concessionaire agrees and undertakes that it shall, in respect of the Project, at all times conform to Applicable Laws and the rules, regulations or by-laws made thereunder relating to buildings, structures, road works, open spaces, electric supply, water supply, sewerage and other like matters.

12.11 Advertisement on the Site

- (a) The Concessionaire may undertake or permit to undertake any form of commercial advertising at the Site. All advertising on the Site shall also conform to Good Industry Practice. It is further agreed that the Project shall be known, promoted, displayed, and advertised by the name of the Concessionaire.

However, CWC shall have the right to display its signboard at suitable places as mutually agreed with the Concessionaire.

- (b) For the avoidance of doubt, it is agreed that the right of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time.

12.12 Incomplete Construction

In the event the Concessionaire fails to complete the Project by the Scheduled Completion Date, including any Time Extension granted under this Agreement, the Concessionaire shall endeavor to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 15.2 for delay of each day until the Project is completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to Termination under Article 36.

ARTICLE 13 – MONITORING OF CONSTRUCTION

13.1 Inspection

During the Construction Period, the Independent Expert shall inspect the Project at least once in 4 months and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Project Completion Schedule, Scope of the Project and Specifications and Standards. The Independent Expert 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 Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.2 Tests

13.2.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Expert 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 Expert 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 prescribed by the agencies operating in the logistic parks / ICDs / CFS / warehouse zones etc. including but not limited to CWC, MES/CPWD, IBC, BIS, IRC and/or MoRTH as per Good Industry Practice for the construction works undertaken by the Authority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the test in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

In the event that results of any tests conducted under this Clause 13.2 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Expert in this behalf. The Independent Expert 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 13.2 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.2 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.3 Suspension of unsafe Construction Works

13.3.1 Upon recommendation of the Independent Expert on any error or defect of a technical nature in the designs and Drawing without rectification of which the Project cannot be carried out as per this Agreement, 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 any equipment, maintenance or any individual on or about the Project. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to herein above.

13.3.2 The Concessionaire shall, pursuant to the notice under Clause 13.3.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and

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thereupon carry out remedial measures to secure the safety of suspended works and or any individual on or about the Project. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. All costs and expenses arising out of or relating to tests and inspections conducted by the Independent Expert to inspect such remedial measures shall be borne by the Concessionaire. Upon receiving the recommendations of the Independent Expert, 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 13.3 shall be repeated until the suspension hereunder is revoked.

- 13.3.3 Subject to the provisions of Clause 33.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”) shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.
- 13.3.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates beyond the Scheduled Completion Date to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend the Scheduled Completion Date in accordance with the recommendations of the Independent Expert. In all other cases, there shall not be any extension in the Scheduled Completion Date on account of any suspension in the Construction Works.
- 13.3.5 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 subject to a maximum of 10% (ten percent) of the initial Concession Period of 45 (Forty-Five) years.

ARTICLE 14-COMPLETION CERTIFICATE

14.1 Completion Certificate

Upon Completion of Construction Works and the Independent Expert determining the successful completion of the planned development, it shall forthwith issue to the Concessionaire and the Authority a Completion Certificate. The Completion certificate shall be issued separately for subsequent development of the Project upon completion of Construction Works and successful tests and inspection as determined by the Independent Expert.

The Concessionaire shall have to obtain the Construction Completion Certificate from the Authority before commencing Commercial Operations. For the avoidance of doubt, it is agreed that the Construction Completion Certificate shall be issued by the Authority to the Concessionaire only upon Concessionaire obtaining of all necessary/ mandatory statutory approvals/ licenses/ Applicable Permits from respective authorities with respect to the Project e.g., Fire NOC, Occupation Certificate, etc. to the satisfaction of the Authority.

14.2 Completion Certificate not a cessation of liability

The issuance of Completion Certificate shall not in any way alter the liability of the Concessionaire, constitute a waiver of unfulfilled obligations, bar remedy or rectification of defects or constitute an acceptance of the Construction Works.

14.3 Safety certification prior to Final COD

The Concessionaire shall, not later than 30 (thirty) days prior to the likely Final COD, notify the Authority and the Independent Expert of the compliance of Safety Requirements and invite them to observe any or all the tests that may be specified by the Independent Expert in accordance with Applicable Laws and Good Industry Practice to determine and certify that the Project is safe for entering into commercial service, and the costs of such tests shall be shared equally between the Concessionaire and the Authority; provided that in case of failure in any test requiring repetition thereof, the cost of such second or subsequent tests shall be borne entirely by the Concessionaire.

ARTICLE 15-ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

- 15.1.1 The Project, shall be deemed to be complete when the Completion Certificate is issued for the New Facilities under the provisions of Article 14. The initial commercial operation date of the Project shall be the Appointed Date (the “**Provisional COD**”), whereupon the Concessionaire, its authorised representatives or the sub-licensees/lessee, under valid and subsisting sub-licensing agreements, shall be entitled to demand and collect Fee. The final commercial operation date of the Project shall be the date on which Completion Certificate for the New Facilities is issued (the “**Final COD**”). The New Facilities shall enter into commercial service on Final COD whereupon the Concessionaire, its authorized representatives or the sub-licensees/lessee, under valid and subsisting sub-licensing agreements, shall be entitled to demand and collect Fee, provided however, that the entry of Project into commercial service shall always be subject to compliance with the provisions of Clause 14.3.
- 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 into commercial service after the handover of Existing Facilities and/or after issuance of Completion Certificate for any reason attributable to the Independent Expert or the Authority, as the case may be, the Concessionaire may declare Provisional COD/ Final COD (as the case may be) and notify the Authority forthwith. In the event of any Dispute relating to the declaration of Provisional COD or Final COD hereunder, the Dispute Resolution Procedure shall apply.

15.2 Damages for delay

Subject to the provisions of Clause 12.6, if Final COD does not occur prior to the 91st (ninety first) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the 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 percent) of the amount of Performance Security for delay of each day until Final COD is achieved.

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 addition, deletion, and modification of 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.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with or without modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the 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, including Material Adverse Effect with reasonable justification and evidence, 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 classification specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with 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 Expert 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 Expert, 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 Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire under this Article 16.

16.3 Restrictions on certain works

- 16.3.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions

of Clause 16.3.2, 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 by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

- 16.3.2 Notwithstanding anything to the contrary contained in this Article 16, the cumulative cost of implementing all the orders pertaining to Change of Scope shall not exceed 10% (ten per cent) of the Overall Total Project Cost at any time during the Concession Period. The cost of change of scope shall be part of the Overall Total Project Cost of the project.

Note: For Clause 16.3.2, the Overall Total Project Cost shall be the Value in INR as set forth by the Authority under Article 47.

16.4 Power of the Authority to undertake works

- 16.4.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 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, and thereupon securing the award of such works or services. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.
- 16.4.2 The works undertaken in accordance with this Clause 16.4 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes disruption in operation 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 16.4.

ARTICLE 17-OPERATION AND MAINTENANCE

17.1 O&M obligation of the Concessionaire

- 17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project, and provide Services to the Users in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvement to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The Concessionaire shall be inter alia at its own cost, expense, and consequences responsible and liable for/to:
- (a) Investigate, study, design, construct as per specifications, operate and maintain the Project in accordance with the provisions of this Agreement, Good Industry Practices and Applicable Laws;
 - (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
 - (c) Ensure that services of water supply, sewerage, drainage, electricity, telephone, etc. at the Site or in the vicinity, encountered during the period of construction / operation / maintenance of the Project and rail line are not damaged. In case of any shifting of utilities required during construction, the Concessionaire will have to bear the upfront charges of such shifting. All the coordination work with concerned Agencies including the clearances/permissions for shifting of utilities will be the responsibility of the Concessionaire;
 - (d) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, Agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
 - (e) Provide all assistance to the Independent Expert/Authority as they may reasonably require for the performance of their duties and services under this Agreement;
 - (f) Provide to the Authority/Independent Expert the reports on a regular basis during the Implementation Period and Operations Period in accordance with the provisions of this Agreement;
 - (g) Adhere to the provisions of all laws of the land including municipal laws and bylaws and rules in connection with display of advertisements. The Concessionaire shall also pay/ ensure payment of advertisement tax, service tax, other taxes & levies if any, in respect of the advertisements displayed.
 - (h) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
 - (i) Develop, implement and administer a surveillance and safety program for the Project and the Users thereof 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;
 - (j) Not place or create or permit any worker or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any right of the Concessionaire therein, save and except as expressly set forth in this Agreement;
 - (k) Notwithstanding any provision in this Agreement be solely responsible for safety, stability, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards as per Agreement during Construction as well as Operation and Maintenance Period and be liable for any claims arising therefrom.

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- (l) Ensure that the Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
 - (m) Operate and maintain the Facility at all times during the Operation Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
 - (n) Ensure that Site and Facilities created are not defaced by any kind of writings/posters;
 - (o) Follow all labour laws and regulations and pay the wages, deposit PF & ESI contributions and other dues to its workers in time. The Concessionaire shall indemnify the Authority from any claims in this regard and submit certificates with details of PF and ESI deposited for each of its employees (and employees of its contractors for which Authority is likely to be Principal Employer under this Contract) every quarter.
 - (p) Intimate the Authority and the Independent Expert about any misconduct or misdeeds or any act or incident involving the Concessionaire or any of its personnel or any of its sub-licensee(s), lessee(s), Contractor(s)/ sub-contractor(s), agent(s), representative(s) in any criminal or civil case and shall hold the Authority liable for any of the same or consequences thereof in any manner whatsoever.
 - (q) Ensure that the Project Assets are handed over to Authority in sound condition on the Transfer Date;
 - (r) Minimize disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
 - (s) Prevent with the assistance of concerned law enforcement agencies, any unauthorized use of the Project;
 - (t) Prevent, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Site by any Third Party;
 - (u) Protect the environment and provision of equipment and materials thereof;
 - (v) Ensure operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
 - (w) Maintain a public relations unit to interface with and attend to suggestions from the Users, government agencies, media, and other agencies. The Concessionaire may develop and maintain a project website with provisions to integrate with the Authority website, to display information about the facilities available to the users, for receiving and publishing user feedback, and mechanism for grievance redressal. The Authority may publish guidelines from time to time related to the website.
 - (x) permitting safe, smooth, and uninterrupted use by the Users of the Project to avail the Services, including prevention of loss or damage thereto, during normal operating conditions;
 - (aa) carrying out periodic preventive maintenance of the Project;
 - (bb) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice;
- 17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, water 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 at all times during the concession period, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at the location identified by the Authority and/or Independent Expert.

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

17.2 Maintenance and Service Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project conforms to the maintenance requirements and service requirements set forth in Schedule-J (the “**Maintenance Manual, Service Maintenance Requirements**”).

17.3 Maintenance Manual

- 17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with Independent Expert, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project 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 Expert. 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 Final COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Expert, 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, and
 - (g) intervals for major maintenance works and the scope thereof.
 - (h) Routine maintenance schedule;
 - (i) Frequency of carrying out intermediate and periodic overhaul of the equipment

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Authority/ Independent Expert (as the case may be) 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 Damages for breach of maintenance obligations

17.5.1 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 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Expert.

Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.5.2 The Damages set forth in Clause 17.5.1 may be assessed and specified forthwith by the Independent Expert; provided that 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.

17.6 Overriding powers of the Authority

17.6.1 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 deterioration of Project Assets, 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 such breach.

17.6.2 In the event of the Concessionaire, upon notice under Clause 17.6.1, fails to rectify the breach within a reasonable period, the Authority may exercise overriding powers under this Clause 17.6.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying the breach; 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 the costs and Damages 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 instruction of the Authority under this Clause 17.6.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.7 Restoration of loss or damage to the Project

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

17.8 Advertising on the Site

The Concessionaire is eligible to construct hoarding boards for advertisement on the Site and generate revenue, provided such advertising thereon, does not violate instructions issued by Authority. All advertising on the Site shall conform to Good Industry Practice. For avoidance of doubt, it is agreed that the rights of Concessionaire here under shall be subject to Applicable Laws, as in force and effect from time to time and no compensation shall be claimed on account thereof.

17.9 Billing Software

17.9.1 All billing at the Facility shall be done through computer software. The Concessionaire shall obtain prior approval from the Authority before obtaining the software license. The selected software shall be capable of generating e-invoice and shall be capable of being integrated to the CWC accounting software. The integration of transactions between both the selected software and the CWC accounting software shall happen through API mode automatically without any manual intervention on real time/daily basis. The process of integrating the selected software with CWC's accounting software shall be undertaken by the Concessionaire at its own cost. Such integration shall be achieved by the Concessionaire prior to the Appointed Date.

17.9.2 The process of purchasing the software license and integrating the selected software with CWC's accounting software shall be undertaken by the Concessionaire at its own cost.

17.9.3 Upon installation and integration of the selected software, all billing and realisation transactions with respect to revenue generated from the Project shall be done through the software. Further, the daily transaction reports shall also be shared on daily basis through email to CWC. Concessionaire shall provide complete access rights to designated CWC personnel to obtain information from the billing software installed by the Concessionaire.

ARTICLE 18-SAFETY REQUIREMENTS

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with provisions of this Agreement, Applicable Laws and Applicable permits and conform to Good Industry Practice for securing the safety of the Users and other persons present at the Facility. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Facility, and shall comply with the safety requirements set forth in Schedule-K (the “**Safety Requirements**”).
- 18.1.2 The Authority, if need be, shall appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.
- 18.1.3 Not later than 180 (one hundred and eighty) days prior to the Scheduled Completion Date, the Concessionaire shall, in consultation with Independent Expert, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project and rail connectivity 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 Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years.
- 18.1.4 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.

ARTICLE 19-MONITORING OF OPERATION AND MAINTENANCE

19.1 Quarterly status reports

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

19.2 Inspection

The Independent Expert shall inspect the Project at least once a month. It shall make a report of such inspection (the “**O&M Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection. It is expressly agreed between the Parties that any inspection carried out by Independent Expert or the submission of the O&M Inspection Report shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

19.3 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Expert 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 Expert and furnish the results of such tests forthwith to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and Schedule H and furnish a report in respect thereof to the Independent Expert 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 work once every week until such work is completed in conformity with this Agreement.

19.4.2 The Independent Expert 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 19.4 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 17.5

19.5 Report of unusual occurrence

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19.5.1 The Concessionaire shall, prior to the close of each week or on the day of the occurrence of an accident/untoward incident, send to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and / or unusual occurrences on the Project relating to the safety and security of the Users and the Project. A monthly summary of such reports shall also be sent within 3 (three) days of closing of each month, as the case may be. For the purposes of this Article 19, accidents and unusual occurrences on the Site shall include:

- a. death or injury to any person;
- b. damaged or dislodged fixed equipment;
- c. any damage or obstruction on the Project, which results in slowdown of the services being provided by the Concessionaire;
- d. any damage or obstruction to the Users or the property of the Users;
- e. disablement of any equipment during operation;
- f. communication failure affecting the operation of the Project;
- g. smoke, fire, theft, trespass, or other breach of security of the Project;
- h. flooding of the Project; and
- i. such other relevant information as may be required by the Authority or the Independent Expert.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 19.5.1, has occurred on that day.

19.5.2 In the event of an Emergency, the Concessionaire shall furnish a report, as soon as reasonably practicable but no later than 12 (twelve) hours after the occurrence of such Emergency, setting out the details of the same and the measures taken to mitigate the impact thereof. The Concessionaire shall also furnish the details of the steps taken to ensure that such accident and/or unusual occurrence does not take place again in the future.

ARTICLE 20-SECURITY

20.1 Security

20.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the Project in accordance with the provisions of this Agreement, the Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the Project for the prevention of terrorism, hijacking, sabotage, major accident and/or similar acts or occurrences in such manner and to such extent as it may reasonably determine.

20.1.2 The Concessionaire shall, without in any way affecting the functioning of any existing CWC facility or public infrastructure facility, provide and maintain perimeter fencing or other suitable protection around the Project and shall be responsible for the security arrangements for the Project in order to maintain orderly conduct of its business and the security thereof.

ARTICLE 21-INDEPENDENT EXPERT

21.1 Appointment of Independent Expert

The Authority shall appoint a consulting firm in accordance with the selection criteria set forth in Schedule-L, to be the independent consultant under this Agreement (the “**Independent Expert**”). The appointment shall be made at the Authority’s sole discretion. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm.

21.2 Duties and functions

21.2.1 The Independent Expert shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-M.

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

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

21.2.4 The Independent Expert shall periodically submit data on the progress / status of Construction Works, financial progress and other requisite details at such intervals, as mentioned in the TOR, which shall enable the Authority for updating the project specific website.

21.2.5 The Independent Expert shall periodically submit data on operation and maintenance status and other requisite details at such intervals, as mentioned in the TOR.

21.3 Remuneration

The remuneration, cost and expenses of the Independent Expert shall be paid by the Authority and subject to the limits set forth in Schedule-L, 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.

21.4 Termination of appointment

21.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Expert at any time, but only after appointment of another Independent Expert in accordance with Clause 21.1 and may reappoint the same or another Independent Expert at a later date during the Construction Period at the sole discretion of the Authority.

21.4.2 If the Concessionaire has reason to believe that the Independent Expert 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 Expert. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Expert for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with Dispute Resolution Procedure. In the event that the appointment of the Independent Expert is terminated hereunder, the Authority shall appoint forthwith another Independent Expert in accordance with Clause 21.1.

21.5 Authorised signatories

The Authority shall require the Independent Expert 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 Expert, and any communication or document required to be signed by the Independent expert shall be valid and effective only if signed by any of the designated persons; provided that the Independent Expert may, by notice in writing, substitute any of the designated persons by any of its employees.

21.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Expert, 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 as set out under Clause 37.1.

21.7 Interim arrangement

In the event that the Authority does not appoint an Independent Expert, or the Independent Expert so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Expert 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 Expert, and such functions shall be discharged as and when an Independent Expert is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 21.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

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ARTICLE 22 - FINANCIAL CLOSE

22.1 Financial Close

- 22.1.1 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 0.1% (zero point one per cent) of the Performance Security for each day of delay, or for a further period not exceeding 200 (two hundred) days, subject to payment of Damages specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the 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.
- 22.1.2 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 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.

22.2 Termination due to failure to achieve Financial Close

- 22.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 33.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 22.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 22.2.1 shall not apply.
- 22.2.2 Upon Termination under Clause 22.2.1, the Authority shall be entitled to encash the EMD/Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if the Financial Close has not occurred solely as a result of Authority being in default of any of its obligations under Clause 4.1, it shall, upon Termination, return the EMD/Bid Security forthwith. For the avoidance of doubt, it is expressly agreed that if the EMD/Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 23 - CONCESSION FEE

23.1 Concession Fee

- 23.1.1 In consideration of the grant of Concession, the Concession Fee is defined as, the higher of: (i) 5% (Five percent) of Total Turnover generated by the Concessionaire as Revenue Share generated through the operation of the Project Facility, or (ii) quoted Minimum Guaranteed Revenue Share (“MGRS”) amount of Rs. _____ (Rupee _____) per annum.
- 23.1.2 The Minimum Guaranteed Revenue Share quoted by the Concessionaire as per clause 23.1.1 shall be increased by 15% (Fifteen percent) after every 3 (Three) years, till the completion of the Concession Period.
- 23.1.3 The revenue generated by the Project shall accrue to the Authority/ CWC in the CWC Escrow Bank Account. From the total Turnover received in the CWC Escrow Account, CWC shall pay 95% of the Total Turnover receipts to the Concessionaire as O&M Fee on the monthly basis. The balance amount, subject to a Minimum Guarantee Revenue Share, shall be retained by CWC. In case the actual Revenue Share @5% on total Total Turnover generated by the SPC in the specific Year is lower than the Minimum Guaranteed Revenue Share, the differential amount shall be retained by CWC, along with the Revenue Share of the following quarter.
- 23.1.4 The Concessionaire shall ensure that all the payments/ charges, including the GST, for the Services rendered to the Users by the Concessionaire in a month (or pro-rata thereof), are collected from the Users and deposited directly into Authority’s Escrow Bank Account. The GST compliant tax invoices must be raised to the Users in the name of the Authority, including but not limited to, the compliance with Rule 46 of CGST Rules, e-invoicing and dynamic QR code on B2C invoices. The IRN for the e-invoice must be generated immediately at the time of issuance of invoice to the Users.
- 23.1.5 Out of the collections referred to in Clause 23.1.4 above, the Authority shall be entitled to retain its consideration on monthly pro-rata basis at the end of each fortnight, i.e., the amounts payable to the Authority under this Clause 23.1, excluding GST.
- 23.1.6 Balance collection available, after retention under 23.1.5 above, shall be remitted to the Concessionaire along with applicable GST, within 07 (seven) working days of submission of bill/invoice with complete details by the Concessionaire, subject to submission of tax invoice as per Rules under GST Law duly certified by the Authority’s Representative. Any of the Concessionaire’s invoices not complying with the provisions hereof shall be returned by the Authority to the Concessionaire whereupon, the Concessionaire shall submit a rectified invoice. The Authority shall, accordingly, make payment of such rectified invoice in accordance with this Clause 23.1.6.

The Concessionaire must raise a GST compliant tax invoice to the Authority to claim its share. The e-invoice will be raised by the Concessionaire to the Authority, if its turnover exceeds the prescribed limit prescribed by the Government in this regard. An invoice, without IRN, shall not be accepted by the Authority in such a scenario. Where the e-invoicing provisions are not applicable to the Concessionaire, it shall provide an undertaking confirming the same. Furthermore, the Concessionaire is required to provide all the relevant details required under the GST provisions, such as description, HSN code, tax type and tax percentage. The Concessionaire must use the GSTIN of applicable unit of the Authority.

- 23.1.7 In case the Concessionaire fails to ensure collection of the fortnightly payment(s)/ charge(s) including the GST, for the Services rendered to the Users by the Concessionaire in a month (or pro-rata thereof), and/or the monthly collection is less than the amount payable to CWC under Clause 23.1.1, the Authority shall raise a bill/ invoice for the differential amount along with GST [i.e., total collection from

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User(s) in a month, less/ minus (-) CWC's entitlement under Clause 23.1.1]. The Concessionaire shall make the payment of the said invoice within 07 (seven) working days from the receipt of such bill/invoice. Failure to adhere to the payment schedule by the Concessionaire will be termed as Concessionaire Default in terms of this Agreement.

- 23.1.8 In the event the Concessionaire fails to make payment of the amount due to the Authority, without prejudice to its other rights, the Authority shall be entitled to invoke and encash the Performance Guarantee. The encashment of the Performance Guarantee shall be without prejudice to the Authority's right to treat the non-payment of the amount by the Concessionaire on the due date, as a breach and terminate the Agreement and also to claim simple interest @12% (twelve percent) per annum for the delayed period, without prejudice to other rights and remedies as may be available to the Authority.

23.2 CWC's right to set-off

- 23.2.1 The Authority shall be entitled to deduct or set-off amounts due/any other dues from any amounts due or any other dues or becoming due to the Concessionaire under this Agreement, including, all claims, levies, costs, damages or expenses, etc. for which the Concessionaire is liable the Authority under this Agreement.

- 23.2.2 The Authority will not be responsible for any non-compliance/ liability arising out of non-deduction/ non-deposit of TDS by the Users/ Concessionaire with respect to payment(s)/ charge(s) collected/received against the Services rendered to the Users by the Concessionaire, and the same getting deposited directly into the Authority's Bank Account.

- 23.2.3 The Authority shall deduct GST at source at applicable rates in case transactions under this Agreement are liable to GST deduction at source. Under GST regime, the Concessionaire is required to correctly and timely disclose the details of output supplies to the Authority, as per GST rules in its GST returns. Non-compliance would result in mis-match of claims and denial of input tax credit to the Authority. Notwithstanding anything contained in this Agreement, in case of such default by the Concessionaire, the amount of Input tax credit denied in GST along with interest and penalty shall be recovered from the amounts payable to the Concessionaire or the available Performance Guarantees.

- 23.2.4 GST paid by the Users to the Authority's bank account shall be deposited by the Authority directly with the concerned Government Department in accordance with the relevant provisions, after availing input tax credit of the GST paid to the Concessionaire, in accordance with provision of GST. Thus, the GST recovered by the Authority from the Users shall not form part of the Total Turnover.

- 23.2.5 The Concessionaire agrees to make good the loss of GST including Input Tax Credit, if any, due to type of storage at the facility and in all cases, the MGRS of CWC shall remain intact and in no way be compromised.

- 23.2.6 The Concessionaire shall be liable to indemnify the Authority for any tax demand and interest and/or penalty thereon arising due to negligence/fault of the Concessionaire.

- 23.2.7 Payments made by the Authority to the Concessionaire would be subject to tax deduction at source as per the relevant provisions of the Income Tax Act, 1961 and the rules made thereunder.

- 23.2.8 Reconciliation to be conducted on quarterly basis. It shall be the responsibility of the Concessionaire to coordinate with CWC officials and fix the date and time of meeting. For each such meeting, Minutes shall be recorded and signed by both the sides.

- 23.2.9 The payment of TDS deducted by customers from the bills raised by CWC shall be made only after submission of Form-16A after due verification by CWC in Form 26AS. Payment against TDS shall be

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made on Quarterly basis only and after submission of written claim by Concessionaire supported by billing and TDS details along with Form-16A issued by the Tax Deductor. Concessionaire hereby indemnifies the Authority from any claims or loss arising out of any discrepancies in filling or payment of the TDS by any third party.

ARTICLE 24-USER FEE

24.1 Collection of Fee by the Concessionaire

24.1.1 On and from Provisional COD, and till the Transfer Date, the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) shall have the sole and exclusive right to demand and collect, on behalf of the Authority, Fee from the Users as deemed appropriate as per market conditions and fair market practices. The Concessionaire shall publish the applicable fees for various Services offered at Project on the website of Project and specify the applicable fees in respect of all or any category of Users. The Concessionaire shall also maintain an archive, accessible by the Authority at any time, of the applicable Fees published by it from time to time.

24.2 Revision of Fee

24.2.1 Subject to the terms and conditions of this Agreement, the Concessionaire may modify/ revise the Fees at any time during the Operation Period.

24.3 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 15 (fifteen) days of completion of each month, a statement of Fee in respect of the Services, facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees (under valid and subsisting sub-license agreement's) at the Project. The Monthly Fee Statement shall contain a detailed break-up of revenues earned by the Concessionaire, including but not limited to, built-up area licensed to third parties, license fee/ rentals applied for the licensed areas, names of third parties to which space has been licensed and revenue from other sources. The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

ARTICLE 25-ESCROW ACCOUNT

25.1 Escrow Account

- 25.1.1 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.
- 25.1.2 The nature and scope of the Escrow Account is fully described in the agreement (the “**Escrow Agreement**”) to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule-N.

25.2 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package
- (b) all amounts received from the Authority as per Clause 23.1.5 as the Concessionaire’s share of Total Turnover generated from the Project in lieu of Services provided to Users; and
- (c) all payment by the Authority, after deduction of any outstanding Concession Fee:

25.3 Withdrawals during Concession Period

- 25.3.1 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;
 - (b) all payments relating to constructions of the Project payable to the Authority in accordance with the terms of the Concession Agreement, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 - (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
 - (d) O&M Expenses and other costs and expenses incurred by the 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, 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 Clause 17.9.2~~ and debit the same to O&M Expenses.
 - (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.

25.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 25.3.1, except with the prior written approval of the Authority. Any such modification of the order of payment, without the prior written approval of the Authority, shall be deemed to be void and non-est.

25.4 Withdrawals upon Termination

25.4.1 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;
- (b) 90% (ninety percent) of Debt Due excluding Subordinated Debt;
- (c) Outstanding Concession Fee and other payments due from the Concessionaire to the Authority.
- (d) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire,; 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 Clause 17.9.2~~ and debit the same to O&M Expenses.
- (e) Retention and payments relating to the liability for defects and deficiencies set forth in Article 33;
- (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 25.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 32.

25.4.2 The provisions of this Article 25 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 25.4.1 have been discharged.

ARTICLE 26-INSURANCE

26.1 Insurance during Concession Period

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

26.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 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, notarized 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.

26.4 Remedy for failure to insure

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

26.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 31 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.

26.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employee, successors, insurers and underwriters, which the Concessionaire may otherwise have acquired 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.

26.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be credited to the Escrow Account, and the Concessionaire shall, notwithstanding anything to the contrary contained in Clause 25.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

26.8 Insurance Cover

Without prejudice to the provisions contained in Clause 26.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

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

26.9 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 affected in accordance with this Agreement.

ARTICLE 27-ACCOUNTS AND AUDIT

27.1 Audited Accounts

- 27.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues recovered, Gross Revenue including Realizable Fee, and all incomes derived/collected by it from or on account of the Project 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, Profit and loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours on any working day and require copies of relevant extracts of books of Accounts, duly certified by the statutory auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 27.1.2 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.
- 27.1.3 On or before the 31st (thirty-first) day of [May] each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

27.2 Appointment of Auditors

- 27.2.1 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 10 (ten) 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-O. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 27.2.2 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 Auditors being appointed from the Panel of Chartered Accountants.
- 27.2.3 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 as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.
- 27.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Concession Period, another firm (the “**Concurrent Auditors**”) as may be decided by the Authority to undertake concurrent audit of the Concessionaire’s accounts.

27.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or

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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 any periodic information in pursuance of the provisions of this Agreement, save and except where such certification is expressly provided.

27.4 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 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

27.5 Dispute Resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Disputes shall be resolved by the Authority by recourse to the Dispute Resolution Procedure as set out under Clause 37.1.

Part V: ForceMajeureandTermination

ARTICLE 28-FORCE MAJEURE

28.1 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 events, as defined in Clause 28.2, if it prevents the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome such event(s) by exercise of due diligence and following Good Industry Practice.

28.2 A Force Majeure Event

A Force Majeure Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Facility for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (c) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, rebellion, revolution, insurrection, terrorist or military action, usurped power, civil commotion or politically motivated sabotage;
- (d) 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;
- (e) Any civil commotion, boycott or political agitation which prevents operations by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (f) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

28.3 Duty to report Force Majeure Events

28.3.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant thereto 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 28 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effects 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 Events; and
- (d) any other information relevant to the Affected Party’s claim.

28.3.2 The Affected party shall not be entitled to any relief for or in respect of a Force majeure Events unless it shall have notified the other party of the occurrence of the Force Majeure Events as soon as reasonably practicable, and in any events 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 Adverse Effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.3.3 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 28.3.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.4 Effect of Force Majeure Event on the Concession

28.4.1 Upon the occurrence of any Force Majeure Events prior to the Appointed Date, the period set forth for fulfilment of Conditions Precedent in Clause 4.1.3 and in Clause 22.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before Final COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Events subsists; or
- (b) after Final COD, whereupon the Concessionaire is unable to perform the Services and consequently collect the Fees despite making best efforts, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from providing the Services and collecting the Fee on account thereof. However, the maximum extension in the Concession Period shall be limited only up to a maximum period of 4.5 (Four and half) years or less, as per the assessment of the Authority.

28.5 Allocation of costs arising out of Force Majeure

28.5.1 Upon occurrence of any Force Majeure Events 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.

28.5.2 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 borne by the respective parties; i.e., the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.

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

28.5.3 Save and except as expressly provided in this Article 28, 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.

28.6 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 28, 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.

28.7 Termination Payment for Force Majeure Event

28.7.1 If Termination is on account of a Force Majeure Event, the Authority shall make Termination Payment to the Concessionaire in an amount equal to:

- (a) 100% (one hundred percent) of the proportionate Debt Due; less any insurance proceeds and
- (b) 50% (fifty percent) of the proportionate Adjusted Equity

However, the total termination payment by the authority to the Concessionaire in any case shall not exceed the depreciated value of assets/ Project on the date of termination.

Note: For the avoidance of doubt, Debt Due and Adjusted Equity payable shall be in proportion to the Total Project Cost.

28.8 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 as set out under Clause 37.1, 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.

28.9 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 29-COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 29.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

29.2 Compensation for default by the Authority

Subject to the provisions of Clause 29.4, in the event of the Authority, being in material breach or default of this Agreement at any time after the Appointed Date, shall compensate the Concessionaire for the loss suffered by extending the Concession Period in the proportion that can be mitigate the loss suffered by such extension. However, any such extension of the Concession Period shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire and no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

29.3 Compensation to be in addition

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

29.4 Mitigation of costs and damage

The Party not in breach 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 30- SUSPENSION OF CONCESSIONAIRE'S RIGHTS

30.1 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 Fee, generate income, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunder or authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issuance 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.

Explanation: It is clarified that the period of Suspension shall be counted as part of the Concession Period and the Concessionaire shall not be entitled for any extension in lieu thereof.

30.2 Authority to act on behalf of Concessionaire

30.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, provide the Services and Operate the Project and collect all Fee and revenue under and in accordance with this Agreement, and the Fee shall be deposited in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 25.3.

30.2.2 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 Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby sub-licenses respectively, the Authority or any other person authorized by the Authority under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Facility and its designs, engineering (as required for proper execution and completion of the Project as envisaged by the Authority), construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

30.3 Revocation of Suspension

30.3.1 In the event that the Authority, acting in accordance with the provisions of Article 30, 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.

30.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith

and restore all rights of the Concessionaire under this Agreement.

30.4 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 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

- 30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Authority to (i) revoke the Suspension and (ii) 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 30.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 31.
- 30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, 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.
- 30.5.3 The termination of the Agreement under this Clause shall be without prejudice to the right of the Authority to recover Damages from the Concessionaire, in terms of the Agreement.

ARTICLE 31-TERMINATION

31.1 Termination for Concessionaire Default

31.1.1 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:-

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days from the date of encashment of the Performance Security, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (d) Final COD does not occur within the period specified in Clause 12.6.3;
- (e) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (f) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (g) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (h) 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 herein above;
- (i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (j) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (k) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (o) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of

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the Concessionaire is admitted before a court (including Tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such petition has not been withdrawn within 30 (thirty) days from the date of issuance of notice therein.

- (p) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets;
- (q) if 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 opinion of the Authority, a Material Adverse Effect;
- (r) if a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 2013 and a liquidator (including provisional liquidator) or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - a. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - b. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
 - c. each of the Project Agreements remains in full force and effect;
- (s) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (t) the Concessionaire submits to 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;
- (u) The Concessionaire issues a Termination Notice in violation of this Agreement
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; OR
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.

31.1.2 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 31.1.3.

31.1.3 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 31.1.2 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 may, in its sole discretion, 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.

31.2 Termination for Authority Default

31.2.1 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 the following:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement

31.2.2 The Cure Period shall commence from the date on which the Concessionaire notifies to the Authority that any such default as mentioned above in Clause 31.2.1 has occurred.

31.2.3 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an 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 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

31.3 Termination Payment

31.3.1 Upon Termination on account of a Concessionaire Default during the Operation Period, (post occurrence of Final COD) the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the 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. However, the total termination payment by the Authority to the Concessionaire in any case shall not exceed the depreciated value of assets/ Project on the date of termination.

31.3.2 Upon Termination on account of Concessionaire Default during the Construction Period, prior to the Final COD, no Termination Payment shall be due and payable for and in respect of expenditure comprising the first forty per cent (40%) of the Project Cost and in the event of expenditure exceeding such forty per cent (40%) and forming part of Debt Due, the provisions of Clause 31.3.1 shall, to the extent applicable to Debt Due, apply for and in respect of the expenditure exceeding such forty per cent (40%).

31.3.3 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) 100% (one hundred percent) of the proportionate Debt Due; less any insurance proceeds and

(b) 150% (one hundred and fifty percent) of the proportionate Adjusted Equity

Note: For the avoidance of doubt, Debt Due and Adjusted Equity payable shall be in proportion to the value of work done, as determined by the Independent Expert.

The Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements.

31.3.4 The Concessionaire expressly agrees that upon expiry of the Concession Period or the extended Concession Period in accordance with Clause 31.9, no Termination Payment shall be due and payable by the Authority to the Concessionaire.

31.3.5 Termination Payment shall become due and payable to the Concessionaire within 60 (sixty) 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 Prime Lending Rate (PLR) on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 120 (One Hundred & Twenty) days. For the avoidance of doubt, it is expressly agreed that Termination Payments shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

31.3.6 The Concessionaire expressly agrees that Termination Payment under this Article 31 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.

31.3.7 The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (Seventy percent) of the Total Project Cost.

31.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) be deemed to have taken possession and control of the Project forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 32.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the

interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For 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 and the Concessionaire shall keep the Authority and its officers protected and indemnified against any such claim or action by any third party in terms of Article 35 hereof. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

31.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.4, 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, Divestment Requirements, and Indemnity shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

31.6 Certain limitations on Termination Payment

31.6.1 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. The Parties agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 70% (seventy per cent) of the Total Project Cost.

31.7 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 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. It is clarified that the rate of conversion of such foreign currency shall be calculated on the date of issue of Termination Notice.

31.8 Limitation of Liability

Neither Party shall be liable to the other for any loss of profit, loss of business, loss of production, loss of contracts or for any indirect or other consequential loss or damage whatsoever that may be suffered by the other Party, except to the extent that such consequential loss or damage is attributable to gross negligence, deliberate default, fraud, fraudulent misrepresentation or willful misconduct by the defaulting Party, its personnel or agents.

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 31.3, 31.7, and 31.8 of this Agreement, shall not exceed [100% (one hundred percent)] of the Total Project Cost.

31.9 Mutual Foreclosure

31.9.1 Without prejudice to any provision of this Agreement, the Authority and Concessionaire may

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at <Name of the Location/ Facility>*

terminate this Agreement by mutual consent in circumstances which does not constitute Authority's Default, Concessionaire's Default or Force Majeure. Such a foreclosure can occur in any of the following 2 possible positions per the mutual consent of the Authority and the Concessionaire:

a. Type A Foreclosure: Foreclosure with mutual consent without any liability or consequential future liability for either Party.

b. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements/claims as per the provisions under Clause 31.8.2.

- 31.9.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a Notice to the other Party and upon issuance of such Notice, the other Party may within a reasonable time-frame either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.
- 31.9.3 In either case of the other Party agreeing to the proposed termination and with prior written approval of the Lender's Representative or otherwise, the Parties may negotiate the terms and conditions of the mutual foreclosure agreement and this Agreement shall stand terminated upon execution of mutual foreclosure agreement. Unless otherwise agreed between the parties, the Concessionaire shall not be entitled to any Termination Payment on the mutual foreclosure of the Agreement.
- 31.9.4 In the event the Parties mutually agree to terminate this Agreement under this Clause, the Authority shall be liable to compensate the Concessionaire as per the provisions under Clause 31.3.3.
- 31.9.5 Any attempt or endeavour for foreclosure by mutual agreement under this Clause shall, subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed that all the rights, claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement thereunder.
- 31.9.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.

ARTICLE 32 – DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

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

- (a) notify 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,
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Safety Requirements, and 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 licenses pertaining to the Project and its design, engineering (as required for proper execution and completion of the Project as envisaged by the Authority), construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date, in accordance with this Agreement. 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 and proper execution and completion of the Project, construction and its operation and maintenance of the Project, as and shall be assigned to the Authority free of any Encumbrance;
- (e) the staff recruited by the Concessionaire shall not be transferred to the Authority upon termination of this Agreement;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) 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
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or its nominee.

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

32.2 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 Expert shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, 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 33 shall

apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 32.

32.3 Cooperation and assistance on transfer of Project

- 32.3.1 The Parties shall cooperate on a best efforts basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 32.3.2 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.
- 32.3.3 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 32.1.1 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 as set out under Clause 37.1 shall apply.
- 32.3.4 The Authority reserves the right to invite bids for the Project at an appropriate time before expiry of Concession Period to enable smooth transition. The Concessionaire reserves the right to bid. The Authority reserves the right to amend the bid conditions, scope of work etc. while inviting fresh bids. The Concessionaire shall allow the core team (consisting of maximum of four persons) of the successful bidder the fresh bid(s) to enter the premises 7 (seven) days before expiry of Concession Period to monitor work and take charge at the appointed hour.
- 32.3.5 During re-bidding of the Project, the Concessionaire shall have the first right of refusal, subject to the following:
- (a) The Concessionaire shall participate in the re-bid of the Project;
 - (b) The Authority shall reserve the right to modify existing or introduce new terms and conditions and bid parameters; and
 - (c) The Concessionaire shall have the right to match the highest bid to exercise the first right of refusal if its bid is within the range of 10% (ten percent) of the most competitive bid received.

32.4 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-P (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 constructed 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.

32.5 Divestmentcostsetc.

32.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of 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 divestments shall be borne by the Authority.

32.5.2 In the event of any Dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure as set out under Clause 37.1 shall apply.

ARTICLE 33—DEFECTS LIABILITY AFTER TERMINATION

33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project, during the Concession Period and for a period of 120 (one hundred and twenty) days after Termination (including expiry of the Concession Period), and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority/Independent Expert 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 Escrow Account or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 33 shall not apply if Termination occurs prior to Final COD.

33.2 Retention of Escrow Account

- 33.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 33.2.3, a sum equal to 5% (five per cent) of the Concession Fee for the year immediately preceding the Transfer Date, shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 33.1.
- 33.2.2 Without prejudice to the provisions of Clause 33.2.1, the Independent Expert shall carry out an inspection of the Project at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 33.2.1 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 Expert shall be retained in the Escrow Account for the period specified by it.
- 33.2.3 The Concessionaire may, for the performance of its obligations under this Article 33, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 33.2.1 or 33.2.2, 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 33. Upon furnishing of a Performance Guarantee under this Clause 33.2.3, the retention of funds in the Escrow Account in terms of Clause 33.2.1 or 33.2.2, as the case may be, shall be dispensed with.

**Part VI Other
Provisions**

ARTICLE 34 - ASSIGNMENT AND CHARGES

34.1 Restrictions on assignment and charges

- 34.1.1 Subject to Clauses 34.2 and 34.3, 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 the Authority shall be entitled to decline without assigning any reason.
- 34.1.2 Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party, except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

The restraints set forth in Clause 34.1 shall not apply to:

- (a) liens arising by operation of law 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, a charge on the Escrow account arising or created in the ordinary course of business of the Project, and a 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.

34.3 Substitution Agreement

- 34.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire or the Selected Bidder/Consortium Members of 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-Q.
- 34.3.2 Upon substitution of the Concessionaire or the Selected Bidder/Consortium Members 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 substituted Concessionaire for curing such breach.

34.4 Assignment by the Authority

- 34.4.1 Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after

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giving 60 (sixty) days' notice to the Concessionaire, assignand/ or transferany 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.

- 34.4.2 Any assignment under this Article 34 shall be subject to the approvals and consents required therefor under Applicable Laws. Provided, however, that the grant of any consent or approval under Applicable Laws shall not oblige the Authority to grant its approval to such assignment, save and except as provided herein.

ARTICLE 35-LIABILITY AND INDEMNITY

35.1 Indemnity by the Concessionaire

- 35.1.1 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.
- 35.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (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, proceedings, 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.

35.2 Indemnity by the Concessionaire

- 35.2.1 Without limiting the generality of Clause 35.1, 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; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are repayable by the Concessionaire or any of its contractors.
- 35.2.2 Without limiting the generality of the provisions of this Article 35, 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, confidentiality 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 license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the 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.

35.3 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 35 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 30 (thirty) 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.

35.4 Defence of claims

- 35.4.1 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 35, 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.
- 35.4.2 If the Indemnifying Party has exercised its rights under Clause 35.3, 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).
- 35.4.3 If the Indemnifying Party exercises its rights under Clause 35.3, 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 authorized 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 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

- (c) 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 35.4.3 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.

35.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 35, 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.

35.6 Survival on Termination

The provisions of this Article 35 shall survive Termination of this Agreement.

ARTICLE 36-RIGHTS AND TITLE OVER THE SITE

36.1 Licensee rights

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

36.2 Access rights of the Authority and others

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

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

36.3 Property taxes

All property taxes on the land shall be payable by the Authority as owner of the Site.

It is clarified that the Authority shall be liable to pay property tax for Project Site/ land only. Any other statutory charges dues including property tax due and payable for facility created/developed by the Concessionaire shall be reimbursed by the Concessionaire, and any default in such reimbursements to the Authority shall be treated as default by the Concessionaire.

36.4 Restriction on sub-licensing

The Concessionaire shall not do the following, which shall constitute an act of Concessionaire Default:-

- (a) Enter into Contractual Arrangements, including the sub-licensing, franchising or similar arrangements in respect of the built-up area subject to the provisions of Clause of 5.1, which, however, shall not involve the transfer of the leasehold rights therein thereof;
- (b) Appoint Sub-contractors for the implementation of the Project at the Site in accordance with the provisions of the Concession Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

36.5 The Parties agree that in the event of Termination prior to expiry of such maximum permissible period, the tenure of the sub-licensees /lessees and the rights of the sub-licensees/lessees shall automatically and forthwith terminate without the need for any action to be taken by the Authority upon the Termination of the Agreement.

ARTICLE 37- DISPUTE RESOLUTION

37.1 Dispute resolution

37.1.1 Any dispute, disagreement, claim or other difference arising out of or in connection with this Agreement ("Dispute") shall be resolved in accordance with this Clause 37.1 (Dispute Resolution).

- In the first instance, the Parties shall attempt to resolve the dispute through good faith discussions.
- In case the Parties are unable to resolve any Dispute through good faith discussions, either Party shall be entitled to refer such Dispute to arbitration by serving notice on the other Party.
- In cases where the claim amount is INR 50 Crores or less, the Arbitral Tribunal shall comprise of a Sole Arbitrator to be appointed from a panel/ list of 5 (Five) persons, as suggested by the Authority to the Concessionaire. Upon receipt of reference of such suggested list of 5 persons by the Authority, the Concessionaire shall select the Sole Arbitrator within a period of 7 (seven) days from the date of receipt of the aforesaid panel/ list, failing which the Sole Arbitrator shall be selected by the Authority, from the aforesaid panel/ list of 5 persons.
- In cases where the claim amount is in excess of INR 50 Crores, the Arbitral Tribunal shall comprise of 3 (Three) members, 1 (One) to be nominated each by a Party, and the Presiding Arbitrator to be jointly appointed by the 2 (two) nominated arbitrators.

37.1.2 The Parties agree that the arbitration proceedings shall be governed by the provisions of the Arbitration and Conciliation Act 1996 of India (or any statutory modification or reenactment thereof for the time being in force). The language of the arbitration shall be English. The seat and venue for such arbitration shall be at New Delhi.

37.1.3 The arbitral proceedings in respect of a particular dispute shall commence on the date on which the arbitrator calls upon the party to file its claim.

37.1.4 Except on the termination of the Agreement, the Concessionaire shall be obliged to continue to provide the Service(s) to the Authority under the Agreement, and continue to carry out the Scope of Work as per this Agreement even during the arbitration proceedings, and no payment due & payable to the Concessionaire (except the payment in dispute), shall be withheld on account of such proceedings.

37.1.5 The cost of arbitral proceedings shall be borne by the Party/ Parties as per the provisions of the Arbitration and Conciliation Act 1996.

37.1.6 The arbitration award shall be a reasoned award. The same shall be final and binding on the Parties. The right to refer any Dispute to arbitration pursuant to this Clause 37.1 (Dispute Resolution) shall survive the expiry or termination of this Agreement.

ARTICLE 38- DISCLOSURE

38.1 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 office on all working days at the Site and the Concessionaire’s registered office. The Concessionaire shall prominently display at the Site, public notices stating the availability of the Specified Documents for such inspection, and shall provide copies of the same to any person upon payment of copying charges on a ‘no profit no loss’ basis.

38.2 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.

38.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 38.1 and 38.2, 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 38.1 and 38.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provision of the Right to Information Act, 2005.

ARTICLE 39- REDRESSAL OF PUBLIC GRIEVANCES

39.1 Complaints Register

- 39.1.1 The Concessionaire shall maintain a public relations office at the Project 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**”). Further, the website / IT platform of the Concessionaire shall allow registration of complaints. The Concessionaire shall provide the Authority with a login ID through which the Authority can monitor the complaints. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project so as to bring it to the attention of all Users.
- 39.1.2 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.
- 39.1.3 Without prejudice to the provisions of Clauses 39.1.1 and 39.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

39.2 Redressal of complaints

- 39.2.1 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.
- 39.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Expert a true photocopy of each of the pages of the Complaint Register and complaints received on IT platform including the action taken thereon 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 40-MISCELLANEOUS

40.1 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 Delhi alone shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

40.2 Waiver of immunity

Each Party unconditionally and irrevocably:

- (a) agrees that 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 asset, 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 judgment or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgment that may be made or given in connection therewith).

40.3 Depreciation and Interest

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

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

40.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 3% (three per cent) above the Bank Prime Lending Rate (PLR), and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

40.5 Waiver

40.5.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision or for 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 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.

40.5.2 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 thereunder.

40.6 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 Expert of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

40.7 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.

40.8 Survival

40.8.1 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.

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

40.9 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 Proposal, shall be deemed to form part of this Agreement and treated as such.

40.10 Severability

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement under Clause 37.1 or otherwise.

40.11 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.

40.12 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.

40.13 Successors and assigns

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

40.14 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 [City Name] 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; in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in [City Name] it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and

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- (b) 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 email, it shall be deemed to have been delivered on the working day following the date of its delivery.

40.15 Supplementary Agreement

The Parties agree that the Parties may execute a Supplementary Agreement, in writing, novating any terms and conditions of this Agreement.

40.16 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.

40.17 Counterparts

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

ARTICLE 41- DEFINITIONS

41.1 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:

“**Access Road**” means road connecting the Site to the carriageway of Highway alongside which the Project is located;

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

“**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 Final COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Total Project Cost, 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 Final COD and until the fourth (4th) anniversary thereof, an amount equal to the Adjusted Equity as on Final COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following Final COD to the extent of variation in Price Index occurring between Final COD and the Reference Date; and
- (c) after the fourth (4th) anniversary of Final COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by zero-point one percent (0.32%) thereof at the commencement of each month following the fourth (4th) anniversary of Final COD and the amount so arrived at shall be revised to the extent of variation in Price Index occurring between Final COD and the Reference Date;

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

“**Affected Party**” shall have the meaning as set forth in Clause 28.1;

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

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

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

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

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

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

“**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 more than **25% (twenty-five percent)** of voting shares in the case of an Associated Firm.

“**Authority Default**” shall have the meaning as set forth in Clause 31.2.1;

“**Authority Representative**” means such person or persons as may be authorised 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 fulfil any obligations of the Authority under this Agreement;

“**Bank**” means a bank incorporated in India and having a minimum net worth of Rs. 1,000 Crore (Rupees one thousand Crore)

“**Bid**” means the documents in their entirety comprised in the bids submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof “**Bid Due Date**” shall have the meaning as ascribed to it under Volume I-RFP;

“**Bid Security or Earnest Money Deposit (EMD)**” means the security provided by the [Concessionaire/ {selected bidder/Consortium}] to the Authority along with the Bid in a sum of Rs. ***** crore (Rupees ***** crore)²⁶, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

“**Business Day**” means day (other than a Sunday) on which banks in the State where the Project is situated are generally open for business;

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

- (a) the enactment of any new Indian law;
- (b) the repeal, modification, or re-enactment of any existing Indian law;
- (c) the commencement of any Indian law which has not entered into effect until the Bid Date;
- (d) a change in the interpretation or application of any Indian law by a judgment of a court of record which has become final, conclusive, and binding, as compared to such interpretation or application by a court of record prior to the Bid Date; or

(e) any change in the rates of any of the Taxes that have a direct effect on the Project;

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and 6 (six) months thereafter; 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 reevaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {these selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period of 6 (six) months after Final COD, shall constitute Change in Ownership;

“Change of Scope” shall have the meaning as set forth in Clause 16.1.1;

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

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

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

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

“Concession Fee” shall have the meaning as set forth in Clause 23.1;

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

“Concessionaire Default” shall have the meaning as set forth in Clause 31.1.1;

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

{**“Consortium”** shall have the meaning as set forth in Recital (D);}

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

“Construction Period” means the period from Appointed Date until the Project Completion Date;

“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 EPCC Contract, the O&M Contractor or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

(f) 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;

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- (g) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (h) not in anyway be extended by any period of Suspension under this Agreement;

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

“CWC Escrow Bank Account” shall be the Escrow account opened and managed by CWC/ Authority wherein all the payments and receipts as per clause 23.1. This escrow account will be opened and managed by CWC in accordance with Article 23.

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

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the **“principal”**) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to 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 Senior Lenders and/or the Concessionaire, it shall for the purposes of this agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken; provided further that the Debt Due shall in no case exceed seventy percent (70%) 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 5 (Five) years period from the Appointed Date;

“Dispute” shall have the meaning as set forth in Clause 37.1.1;

“Dispute Resolution Procedure” means the procedure for resolution of Disputes as set forth in Article 37.1.1;

“Divestment Requirements” means the obligations of the Concessionaire for and in respect of Termination as

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et forth in Clause 32.1;

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

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

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

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

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

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Concessionaire, and any interest-free funds advanced by any shareholder of the Concessionaire for meeting such equity component, but does not include equity support by the Authority;

“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 25.1.2;

“Escrow Bank” shall have the meaning as set forth in Clause 25.1.1;

“Escrow Default” shall have the meaning as set forth in Schedule-N;

“Existing Facilities” means the existing warehousing facilities built on the Site that are under operational use currently under the Authority and shall be handed over to the Concessionaire as part of the Site;

“Fee” means the charge levied on and payable by a User for provision of any or all of the Services, in accordance with the Schedule of Fees and this Agreement;

“Final COD” or **“Final Commercial Operation Date”** shall have the meaning as set forth in Clause 15.1.1;

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

“Financial Default” shall have the meaning as set forth in Schedule-Q;

“Financial Model” means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues there from 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 Project Cost/Overall Total Project Cost of 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 and Subordinated Debt;

“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 any amendments or modifications made to them;

“Force Majeure” or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 28.1.

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

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

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

“Indemnified Party” means the Party entitled to the benefit of an indemnity pursuant to Article 35;

“Indemnifying Party” means the Party obligated to indemnify the other Party pursuant to Article 35;

“Independent Expert” shall have the meaning as set forth in Clause 21.1;

“Insurance Cover” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and includes all insurances required to be taken out by the Concessionaire under Clause 26.1 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

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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;

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

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

“**Licensed Premises**” shall have the meaning as set forth in Clause 10.2.2; “**LOA**” or

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

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

“**Master Plan**” shall mean master plan finalized in terms of Article 12 for construction, development and operation of the warehousing and logistics facilities in accordance with the provisions of this Agreement, and includes the vacant land earmarked for expansion of the Project;

“**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;

“**Monthly Fee Statement**” shall have the meaning ascribed to it in Clause 24.3;

“**Minimum Guaranteed Annual Concession Fee**” shall have the meaning ascribed to it in Clause 23.1.1;

“**New Facilities**” means the warehousing facilities to be developed on the Site to augment Existing Facilities and to fully replace the Existing Facilities prior to the Scheduled Completion Date;

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

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

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

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

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

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

“**O&M Inspection Report**” shall have the meaning as set forth in Clause 19.2;

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

“**Overall Total Project Cost**” shall have the meaning as ascribed to it under the definition of Total Project Cost;

“**Panel of Chartered Accountants**” shall have the meaning as set forth in Clause 27.2.1;

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

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

“**Preservation Costs**” shall have the meaning as set forth in Clause 13.5.3;

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

“**Project Agreements**” means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services during construction period involving a consideration of up to Rs. [5 (five)] Crore;

“**Project Assets**” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, (b) tangible assets such as civil works and equipment including foundations, embankments, electrical systems, communication systems, rest areas, (c) Project Facilities situated on the Site; (d) buildings and immovable fixtures (e) all rights of the Concessionaire under the Project Agreements; (f) financial assets, such as receivables, security deposits etc.; (g) insurance proceeds; and (h) Applicable Permits and authorizations relating to or in respect of the Project.

“**Project Completion Date**” means the date on which the Completion Certificate is issued under the provisions of Article 14;

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

“**Protected Documents**” shall have the meaning ascribed to it in the Explanation to Clause 38.3;

“**Provisional COD**” or “**Provisional Commercial Operation Date**” shall have the meaning as set forth in Clause 15.1.1;

“**RBI**” means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

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

“**Realisable Fee**” means all the Fee due and realisable under this Agreement, with or without

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any discounts or reduction in Fee, but does not include Fee that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, which shall truthfully reflect the actual collection of Fee, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply

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

“**Reference Index Date**” means, in respect of a specified date, the last date of the preceding month with reference to which the Construction Price Index or the O&M Price Index is revised.

“**Request for Proposals**” or “**RFP**” shall have the meaning set forth in Recital (D);

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

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

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

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.6;

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

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

“**Services**” shall mean the Core Logistics Services and Value-Added Services and shall include the services as outlined in **Schedule-C**;

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

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

“**Specified Assets**” means and includes all or any of the Project Assets forming part of the Project but shall in no case include any land;

“**State**” means the State of ***** in which the Project is situated and “**State Government**” means the government of that State;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditor of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Prime Lending Rate (PLR) in case of loans expressed in Indian Rupees and lesser of the actual interest rate and 6 (six)-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due 1 (one) year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders 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 as set forth in Clause 34.3;

“Supplementary Agreement” shall mean the agreement executed between the Parties novating any term and/or condition of the Agreement, upon the execution of which all rights and claims of the Concessionaire in respect of the novated terms and conditions shall cease;

“Suspension” shall have the meaning as set forth in Clause 30.1;

“Taxes” means any Indian taxes including excise duties, customs duties, goods and services 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 the expiry or termination of this Agreement and the Concession hereunder;

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

“Termination Payment” means the amount payable by the Authority to the Concessionaire, upon Termination; and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment.

“Tests and Inspection” means the tests set forth Schedule-H to determine the completion of the Project in accordance with the provisions of this Agreement and shall, *mutatis mutandis*,

“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 aggregate value of capital cost of the Project as set forth in the Financial Package; and

- (b) the aggregate value of actual capital cost of the Project upon completion; and
- (c) the Estimated Project Cost as provided in the RFP;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and Final COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

“Total Turnover” shall mean the aggregate of all revenue earned from the operations or directly attributable to the project.

Explanation: For the removal of doubts, it is clarified that any amount charged by the concessionaire to the users in relation to the project, whether or not such revenue is actually realized from the users, shall form part of the Total Turnover.

Provided however that any income earned from the following activities shall be excluded from the computation of Total Turnover:

- i. income from investing surplus funds by the concessionaire;
- ii. income from any other investments not directly related to the project;

Provided also that notwithstanding anything contained in this Agreement the Total turnover shall not include taxes or charges collected by the concessionaire from the users of the services and paid or remitted to the authorities concerned.

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

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

Explanation: For avoidance of doubt, it is clarified that the term “person” referred in the definition of “User” above shall also include any company, corporation, unincorporated organisation, or any other legal entity or their agents etc. using the Services of the Project.

“User Charter” shall have the meaning as set forth in Clause 23.4;

“Vesting Certificate” shall have the meaning as set forth in Clause 32.4;

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE Authority by:

(Signature) (Name)

(Designation)

(Address)

(Fax No.)

(e-mail address)

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; (Signature)

(Name) (Designation)

(Address)

(Fax No.)

(e-mail address)

In the presence of: 1.

2.

SCHEDULES

SCHEDULE – A - SITE OF THE PROJECT

1. The Site

a) The Site (geo- co-ordinates provided in Annex -I) of the Project Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A; and

b) An inventory of the Licensed Premises including the land area, buildings, structures, road works, trees and any other immovable property on, or attached to, the Licensed Premises shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum of the Agreement.

Annex - I (Schedule-A)

SITE FOR THE PROJECT FACILITY

Existing Layout plan of the facility to be added

SCHEDULE – B – DEVELOPMENT OF THE WAREHOUSE FACILITY

1. Development of the Warehouse Facility

Development of the Warehousing Facility shall include construction of the Facility as described in this Schedule-B and in conjunction with Schedule A and Schedule D.

2. Warehouse Facility

Notwithstanding anything contrary to facilities mentioned of Schedule A, the development of the Facility shall include:

Warehousing zone and allied facilities

- a) Warehousing zone comprising of cold storage, closed and open warehouses, etc.,

Internal roads and Circulation Area

- b) Internal Roads
- c) Paved area for circulation

Truck and Vehicle Parking

- d) Parking facilities for trucks and other vehicles of Users who come to avail the Services of the Warehouse Facility

Supporting Facilities

- e) Facilities for providing O&M services for trucks, containers, rail, cargo handling and material handling equipment, etc.,
- f) Recreational facilities for drivers and support staff such as lodging and boarding facility, rest rooms, etc.,

Utilities

- g) Utilities such as water distribution network, sump & overhead tank, rainwater harvesting, storm water drains, sewage treatment plant, solid waste management, electrical substation and distribution network, street lighting, yard lighting, fire station, fire water supply with hydrants & fire network, etc., and all other required facilities for the smooth operation of the Warehouse Facility.
- h) IT Infrastructure (hardware and software) required for maintenance of cargo entry records, records for Core Logistics Services, Value Added Services and such other services as set forth in Schedule C.

Landscaping and Horticulture Area

- i) Open landscape and horticulture area

Any other Facility

- j) Any other facilities or Services required on case-to-case basis for smooth functioning and operation of the Warehouse Facility.

The development of the Warehouse Facility shall be undertaken in conformity with the Specifications and Standards set forth in Schedule-D.

Annexure I (Schedule - B)
PROPOSED MASTER PLAN

◇ (To be updated)

Annexure II (Schedule – B)
Provision related to Environment Protection

The Concessionaire shall in addition to the terms and conditions of the approvals, sanctions, permissions granted by relevant Government Instrumentality, relating to the Project, also comply and adhere to the following terms and conditions:

General Conditions: (Construction Phase)

- a) The solid waste generated should be properly collected and segregated. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
- b) Disposal of muck construction spoils, including bituminous material during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in the approved sites with the approval of competent authority.
- c) Any hazardous waste generated during construction phase should be disposed of as per applicable rules and norms with necessary approvals of the State Pollution Control Board.
- d) Adequate drinking water and sanitary facilities should be provided for construction workers at the Site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
- e) Arrangement shall be made that wastewater and storm water do not get mixed.
- f) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices
- g) The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority, if ground water tapping is done.
- h) Permission to draw ground water for construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.
- i) Fixtures for showers, toilet flushing, and drinking should be of low flow either by use of aerators or pressure reducing devices or sensor-based control.
- j) The Energy Conservation Building code shall be strictly adhered to.
- k) All the topsoil excavated during construction activities should be stored for use in horticulture/landscape development within the Project Site.
- l) Additional soil for levelling of the proposed Site shall be generated within the Site (to the extent possible) so that natural drainage system of the area is protected and improved.
- m) Soil and ground water samples to be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
- n) Concessionaire to strictly adhere to all the conditions mentioned in State Protection and Preservation of Tree Act, as applicable, and as amended during the validity of Environment Clearance.
- o) The diesel generator sets to be used during construction phase should be of low sulphur diesel type and should conform to Environment (Protection) Rules prescribed for air and noise emission standards.
- p) Vehicles hired for transportation of raw material shall strictly comply the emission norms prescribed by Ministry of Road Transport & Highways Department. The vehicle shall be adequately covered to avoid spillage/leakages.

- q) Ambient noise levels should conform to applicable standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be taken to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/MPCB.
- r) Diesel power generating sets proposed as source of backup power for elevators and common area illumination during construction phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel is preferred. The location of the DG sets may be decided with in consultation with State Pollution Control Board.
- s) Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings by a separate environment cell /designated person.

General Conditions: (Operation Phase)

- a)
 - i. The solid waste generated should be properly collected and segregated.
 - ii. Wet waste should be treated by organic waste convertor and treated waste (manure) should be utilized in the existing promises for gardening. And, no wet garbage shall be disposed outside the premises.
- b) Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
- c) E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules 2016.
 - i. The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the MPCB and Environment department before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled/ reused to the maximum extent possible Treatment of 100% grey water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP.
 - ii. Concessionaire to ensure 100 % treatment to sewage/liquid waste and explore the possibility to recycle at least 50% of water.
- d) Concessionaire shall ensure completion of STP. MSW disposal facility, green belt, development prior to occupation of the buildings. Concessionaire to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line.
- e) The Occupancy Certificate shall be issued by the Local Planning Authority to the Project only after ensuring sustained availability of drinking water, connectivity of sewer line to the Project Site and proper disposal of treated water as per environmental norms
- f) Traffic congestion near the entry and exit point from the roads adjoining the proposed Project Site must be avoided. Parking should be fully internalized and no public space should be utilized.
- g) Concessionaire to provide adequate electric charging points for electric vehicles (EVs).
- h) Green Belt Development shall be carried out considering Central Pollution Control Board (CPCB) guidelines including selection of plant species and in consultation with the local DFO, Agriculture Dept.
- i) A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.

- j) Separate funds shall be allocated for implementation of environmental protection measures/EMP along with item-wise break-up. These cost shall be included as part of the Bidding. The funds earmarked for the environment protection measures shall not be diverted for other purposes.
- k) Concessionaire should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the State Pollution Control Board & SEEIA, on 1st June & 1st December of each calendar year, with intimation to the Authority.
- l) A copy of the clearance letter shall be sent by Concessionaire to the concerned Municipal Corporation and the local NGO if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Concessionaire.
- m) The Concessionaire shall upload the status of compliance of the stipulated Environment Clearance conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely, SPM, RSPM, SO₂, NO_x (ambient levels as well as stack emissions or critical sector parameters, indicated for the Project shall be monitored and displayed at a convenient location near the main gate of the Site by the Concessionaire in the public domain.

General Conditions for the Project

- a) Concessionaire has to strictly abide by the conditions stipulated by SEAC & SEIAA.
- b) If applicable Consent for Establishment shall be obtained from State Pollution Control Board under Air and Water Act and a copy shall be submitted to the Environment department before start of any construction work at the site.
- c) Under the provisions of Environment (Protection) Act, 1986, legal action shall be initiated against the Concessionaire if it was found that construction of the project is deviating the environmental clearance.
- d) The Concessionaire shall also submit six monthly reports on the status of compliance of the stipulated EC conditions including results of monitored data (both in hard copies as well as by e-mail) to the respective Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB.
- e) The environmental statement for each financial year ending 31st March in Form-V as is mandated to be submitted by the Concessionaire to the concerned State Pollution Control Board as prescribed under the Environment (Protection) Rules, 1986, as amended subsequently, shall also be put on the website of the Concessionaire along with the status of compliance of EC conditions and shall also be sent to the respective Regional Offices of MoEF by e-mail.
- f) No further Expansion or modifications, other than mentioned in the EIA Notification, 2006 and its amendments shall be carried out without prior approval of the SEIAA. In case of deviations or alterations in the project proposal from those submitted to SEIAA for clearance, a fresh reference shall be made to the SEIAA as applicable to assess the adequacy of conditions imposed and to add additional environmental protection measures required, if any.

General Conditions for the Project:

The specific conditions, if any, during obtaining Environment Clearance laid down by SEIAA shall be complied by the Concessionaire, strictly in accordance to the rules and regulations, at its own cost.

SCHEDULE – C – SERVICES

The Concessionaire shall provide the following Services in accordance with the provisions of this Agreement and Applicable Laws:

Part-A Core Logistics Services

Core Logistics Services shall mean:

- i. Warehousing Services;
- ii. Specialized storage solutions Services;
- iii. Cargo aggregation and distribution Services;
- iv. Services at Container terminals and/ or bulk/ break-bulk cargo terminals; and
- v. Such other services as may be specified by the Authority from time to time as per Applicable Law.
- vi. Services in relation to Customs Electronic Data Interchange (EDI) Service Centre, with required amenities and facilities.
- vii. Services from Cargo scanning facilities along with provision of container scanners.
- viii. Any other services on case to case basis

**Part – B
Supporting Services**

Supporting facilities shall mean to include:

- i. Services relating to Parking space and O&M services for trucks;
- ii. Services relating to Recreational facilities for drivers and other staff;
- iii. Services relating to Office space; and
- iv. Services relating to Parking facility for trucks and other vehicles of the Users with sufficient turning and movement space.

**Part – C
General Provisions**

- i. Conduct of all the Services as required by the Applicable Law and the provisions of this Agreement;
- ii. Provision of such other services as may be specified by the Authority.

SCHEDULE – D – SPECIFICATIONS AND STANDARDS

The Concessionaire shall ensure compliance as per industry best practices, as may become applicable from time to time including but not limited to the specifications and standards set forth herein for development of the Project.

General standards

- a) Bureau of Indian Standards (BIS), Indian Standards, National Building Code, Central Public Works Department (CPWD), Ministry of Road Transport and Highways (MoRTH), Indian Road Congress (IRC), Indian Railways Standards.
- b) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore; and
- c) Any other specifications/standards/codes proposed by the Concessionaire and reviewed by the Independent Expert.

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

In case of any conflict or inconsistency in the provisions of the applicable Indian Standards or codes and International Standards or codes, the Indian Standards or codes shall apply.

The latest version of the specified codes and standards which were notified/published at least 60 (sixty) days prior to the bid date in respect of this Agreement shall apply. For subsequent phases, updated codes and specifications in force at the time of actual execution shall be considered.

SCHEDULE – E – APPLICABLE PERMITS

PART I

1. Applicable Permits

1.1. The Concessionaire shall obtain, as required under Applicable Laws, the following Applicable Permits:

- i. Consent to Establish from state pollution control board
- ii. Permission of the State Government for drawing water from river / reservoir
- iii. Licence from inspector of factories or other competent authority
- iv. NOC from Director of Town and Country Planning - (DTCP)/ Gram Panchayat
- v. Permission of village panchayat and State Government or any other Government body for borrow earth
- vi. Clearance of Pollution Control Board for setting up Batching Plant;
- vii. Clearance of Pollution Control Board for Asphalt Plant;
- viii. Clearance of Pollution Control board for installation of diesel generator sets
- ix. Any other clearances as per applicable law.

S. No.	Approval	Relevant Authority
Warehouse (State government approvals)		
1.	Warehouse	Chief town planner cum chairman (Building Plan Approval Committee)
2.	Shop and establishment certificate	Shop and Establishment Department
3.	Building insurance	Any insurance company
4.	Structural Stability Certificate	Architect and Structural Engineer
5.	Drug License (pharmaceuticals)	State Pharma office
6.	Gram Panchayat no objection certificate	Local village Pradhan
7.	Weighment License	Weights and Measures Department
8.	Department Permission Certificate	District Town Planner
9.	Structure Design	Structural Engineer
10.	Rainwater harvesting	Central Ground Water Authority
11.	Storage of Hazardous Goods	Chief Controller of Explosives and Ministry of Environment
12.	Setback and height specification	Chief town planner cum chairman (Building Plan Approval Committee)
HR/ admin/ safety and security/ firefighting/ pollution control		
13.	Fire No Objection Certificate	State Fire Department
14.	Water level monitoring	Central Ground Water Authority
15.	Approval for hazardous materials	As per the requirement/ Pollution Department
16.	Weight and measures (100 T weighbridge)	State Weight and Measurement Department
17.	Factory License	State Government
18.	Registration Certificate of shop or commercial establishment	State Government
19.	Registration Certificate of shop or commercial establishment – Inland Container Depot	State Government
20.	Environmental Monitoring Report	Noise, water, air assessment state department
21.	Environmental statement (Form V)/ Audit report	Noise, water, air assessment, state department
Other approvals		
22.	Permission for engaging contract labour	State Labour Commissioner
23.	Electric load sanction and connection	State Power Board
24.	Electricity Supply	State DISCOM

SCHEDULE – F – PERFORMANCE SECURITY

To,
Name and address

WHEREAS:

(A) [•] (the “**Concessionaire**”) and the [•] (“**Authority**”) have entered into a Concession Agreement dated [•] (the “**Agreement**”) whereby the Authority has resolved to establish a Warehouse Facility at [•] in district [•] in the State of [•] on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis, subject to and in accordance with the provisions of the Agreement.

(B) The Agreement requires the Concessionaire to furnish a Performance Security to the Authority in a sum of [INR [•] (Rupees [•])] assessed by the Authority mentioned in the Agreement) (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, (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 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 its authorized representative, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other Authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing

whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 180 (one hundred and eighty) days from the date of expiry of this Guarantee (“**Claim Period**”), all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security, subject to the Claim Period mentioned in Clause (7) above, shall cease to be in force and effect when the Commercial Operation Date under the Agreement has occurred. Upon request made by the Concessionaire, after the expiry of the Claim Period, for release of the Performance Security along with the particulars required hereunder including that the Commercial Operation Date under the Agreement has occurred, duly certified by a statutory auditor of the Concessionaire, and the Authority shall release the Performance Security forthwith.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the 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 authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect until the date which is 180 (one hundred and eighty) days after the occurrence of [Commercial Operation Date] of phase [*] under the Concession Agreement as notified to the Bank by the Authority.

Signed and sealed this [•] day of [•] 20 [•] at [•]

SIGNED, SEALED AND DELIVERED

For and on behalf of the **BANK** by:

(Signature)

(Name)

(Designation)

(Code Number)

(Address)

NOTES:

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

SCHEDULE – G – DRAWINGS

1. Drawings

In compliance of the obligations set forth in Clause 12.4 of this Agreement, the Concessionaire shall furnish to the Independent Expert and Authority, free of cost, all Drawings related to the Warehouse Facility

2. Additional drawings

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed herein, 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 Expert.

SCHEDULE – H – TESTS

1. Schedule for Tests

- 1.1. The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Project Facility, notify the Independent Expert and the Authority of its intent to subject the Project Facility to Tests, and no later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Project Facility.
- 1.2. The Concessionaire shall notify the Independent Expert of its readiness to subject the Project Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert 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 Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this **Schedule-H**.

2. Tests

2.1. Visual and Physical Test

The Independent Expert shall conduct a visual and physical check of the Project Facility, to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.2. Trial run

The Independent Expert shall require the Concessionaire to carry out or cause to be carried out a trial run to determine that the Project Facility construction is in conformity with the Specifications and Standards, especially with respect to the capacity of each of its systems and equipment.

2.3. Environmental audit:

The Independent Expert shall carry out a check to determine conformity of the Project Facility with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.4. Safety review:

The Independent Expert shall carry out a safety audit of the Project Facility to determine its compliance with the provisions of **Schedule-K** and this Agreement.

2.5. Air compression and diesel generator sets:

The Independent Expert shall conduct or cause to be conducted Tests to determine that the air compression units of all utilities conform with their rated capacities; and the diesel generator sets are capable of being operated for 48 hours in full load and no-load conditions.

3. Agency for conducting Tests

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

4. Tests for Safety Certification

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

5. Completion Certificate/ Provisional Certificate

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

6. Tests during construction

Without prejudice to the provisions of this Schedule-H, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

SCHEDULE – I – PROJECT COMPLETION SCHEDULE

Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-I for each of the Project Milestones and the Scheduled Completion Date (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of achievement of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

1 Project Milestone-I:

- 1.1 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have submitted the Detailed Project Report of the Project to the Authority and the Independent Expert for review and approval.
- 1.2 Project Milestone-I shall occur at completion of 3 (three) months from the Appointed Date (the “**Project Milestone-I**”)

2 Project Milestone-II Scheduled Completion Date

- 2.1 The Scheduled Completion Date shall be 60 (sixty) months from the Appointed Date.
- 2.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the construction of New Facilities in accordance with this Agreement.

3 Extension of period

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

**SCHEDULE – J – MAINTENANCE MANUAL, SERVICE MAINTENANCE
REQUIREMENTS**

1. Service Requirements

- 1.1. The Concessionaire shall adhere to Good Industry Practices for maintaining Service quality and shall maintain up to date certifications of industry best practices and standards for Service quality, as may be applicable from time to time during the Concession Period.
- 1.2. Further, Concessionaire shall develop and submit a Service quality manual, in reference to Annex -I of this Schedule-J, to the Independent Expert laying down processes and procedures related to the quality assurance of Services offered to Users of the Warehouse Facility.

2. Maintenance Requirements

- 2.1. The Concessionaire shall, at all times, operate and maintain the Project Facility 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-J.
- 2.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2.3 and 2.4 of this **Schedule-J** 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 the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

Repair/rectification of defects and deficiencies

- 2.3. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies of Project Assets in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

The Concessionaire shall furnish the Maintenance Manual to the Independent Expert in reference to but not limited to the following standards:

- Building maintenance as per CPWD Maintenance Manual-2019.
- Equipment maintenance as per Good Industry Practices. Equipment fitness certificates are to be submitted to the Independent Expert.
- Maintenance history book is to be maintained for all the equipment.
- Maintenance for rigid pavement as per IRC:SP: 83:2018
- Maintenance for flexible pavement as per IRC: SP: 82: 2015
- Maintenance for interlocking concrete block pavement as per IRC: SP: 63:2018.
- Road Lighting maintenance as per IS: 1944:1970/1981.
- Firefighting system-Maintenance of Piping systems as per maintenance manual by CPHEEO and fire hydrants as per NBC.
- Fire safety extinguishers maintenance as per IS 2190:2010 & IS 1648:1961.
- Water supply and drainage system maintenance as per IS 2065 :1983.
- Storm water system
- Painting works as per IS 2395:1994.
- The Concessionaire shall use all possible and updated technology in sanitation, solid waste management and disposal and rainwater harvesting for better upkeep and maintaining the best hygienic conditions in the Warehouse Facility.

The Maintenance Manual shall cover all the activities required for maintenance of all the Project Assets. A reference of various activities and their prescribed maintenance frequency is provided below

S. No.	Activity	Frequency
Landscaping Areas		
1	Watering of landscaped areas to be done with proper permanent water supply arrangements like sprinklers etc.	At least once daily/As per requirement
2	Damaged trees and bushes	To be replaced within 3 days and in case of any hinderance to traffic or pedestrian movement, the same is to be cleared immediately.
3	Obstructions caused by landscaping obstructing the minimum headroom of 5 m above the driveway or obstructing the visibility of road signs	To be removed within 1 day
Wet Utilities		
1	Damage to related to water supply	Restoration through temporary measures within 4 hours Restoration through permanent measures within 3 days.
2	Damage of drainage system	Restoration through temporary measures within 4 hours Restoration through permanent measures within 1 day Leakages to be repaired within 24 hours
3	Damage of sanitary installations	Damage to septic tank to be repaired within 1 day after detection Restoration through temporary measures within 1 days
4	Damage to rainwater harvesting system	Restoration through permanent measures within 7 days Periodically desilting and particularly prior to pre-monsoon & monsoon
Solid Waste Management		
1	Refuse or solid waste to be disposed of to the secondary collection centres or designated disposal sites	Daily
Electrical Utilities		
1	Functioning of power supply, electrical installations and electrical equipment for buildings and external	Power supply to common areas to be restored within 30 seconds during the night and within 5 minutes during the day, in the event of a power shortage, using the DG set. 24 hours back up is required for cold storage as well as common operating areas. Safety audit as per requirement / once in a year whichever is minimum
2	Electrical fittings like bulbs, lamp shades, wiring etc. to be operational at all times	Replacement/restoration through temporary measure within 4 hours Restoration through permanent measure within 2 days Restoration through temporary measures within 4 hours
3	Damage to internal lighting (Illumination of the Warehouse Facility)	Restoration through permanent measures within 2 days Lighting level falling below the Standards and Specifications to be rectified within 4 hours

4	Damage to exterior lighting	Faults and minor failures to be repaired within 4 hours Any major failure of the system to be repaired within 1 day
5	Safety audit	At least once in a year

Fire Fighting System

1	Cleaning of firefighting equipment including portable fire extinguishers, smoke detectors/fire detectors, fire pump panels, valves, hydrants, piping of all types etc.	At least once in a fortnight & as and when required
2	Check working of fire extinguishers including powder checking	At least once in every 3 months
3	Check working and functioning of automatic analogous addressable fire detection, fire alarm, and firefighting system periodically	At least once in every 3 months
4	Replacement of fire extinguisher	Prior to the expiry date or once in every 3 years whichever is minimum.
5	Defective or damaged fire fighting Equipment	Defective detectors to be replaced within 1 day.
6	Fire mock drill	Every month/ as per requirement of Chief Fire officers of area in which the Warehouse Facility is located whichever is minimum.
7	Safety audit	At least once in a year.

Miscellaneous

1	Regular pest and rodent control treatment for all buildings and landscaped areas	At least once every month
2	Cleaning of any other equipment/Misc. items	As and when required

- 2.4. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.
- 2.5. In respect of any defect or deficiency, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

Extension of time limit.

- 2.6. Notwithstanding anything to the contrary specified in this Schedule-J, 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 Expert and conveyed to the Concessionaire and the Authority with reasons thereof.

Emergency repairs/restoration

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

Inspection by the Concessionaire

- 2.8. The Concessionaire shall, through its engineer, undertake a periodic (at least weekly) visual inspection of the Project Facility in accordance with the Maintenance Manual and maintain a record thereof in a register to be kept in such form and manner as the Independent Expert 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 Expert at any time during office hours.

Divestment Requirements

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

Display of Schedule – J

- 2.10. The Concessionaire shall display a copy of this Schedule-J at the Project Facility along with the Complaint Register stipulated in Clause 39.1.

Annexure I (Schedule – J)
SERVICE QUALITY MANUAL

The Concessionaire shall furnish the Service Quality Manual for all the Services undertaken under Schedule C of this Agreement but not limited to the major Services to the Independent Expert:

- i. Core Logistics Services
- ii. Supporting Services
- iii. Security Services
- iv. Other Services as prescribed by the Authority

The Service Quality Manual shall adhere to ISO 9001:2015-Quality management systems which shall include, but not limited to the following:

- i. Customer focus
- ii. Leadership
- iii. Involvement of people
- iv. Process approach
- v. System approach to management
- vi. Continuous improvement
- vii. Factual approach to decision making
- viii. Mutually beneficial supplier relationships

The Service Quality Manual shall be revised on an annual basis based on the quantum and type of the Services at the Warehouse Facility and as approved by the Independent Expert.

SCHEDULE – K – SAFETY REQUIREMENTS

1. Guiding principles

- 1.1. Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on or about the Project, irrespective of the person(s) at fault.
- 1.2. Safety Requirements apply to all phases of construction, operation, and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3. Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement, and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this **Schedule -K**.

2. Obligations of the Concessionaire

- a) Applicable Laws and Applicable Permits.
- b) Provisions of this Agreement.
- c) Manuals, if any, issued by the Authority or any Designated GOI Agency.
- 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 Facility under and in accordance with this Schedule K, 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 safety expert and one logistics services expert to undertake safety audit of the Project Facility.
- 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 an inspection of the Project Facility. 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 Facility. The Safety Report shall be submitted to the Authority in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Expert forthwith.

4. Safety measures during Operation Period

- 4.1. The Concessionaire shall develop, implement and administer a safety programme for the Project Facility, staff, Users and persons, and property belonging to the Users, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2. The Concessionaire shall keep a copy of every first information report recorded by the Police / or details of the accidents resulting equipment malfunctions or failure or human error with respect to any accident occurring on or about the Project Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.
- 4.3. The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the

preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 4.1 of this **Schedule-K** for averting or minimising such accidents in future.

- 4.4. Once in every Accounting Year, the Authority shall cause a safety audit to be carried out for review and analysis of the annual report and accident data of the preceding year. The recommendations of such safety audit shall be communicated to the Concessionaire and the Independent Expert. Within 15 (fifteen) days of receipt of such communication from the Authority, the Concessionaire and the Independent Expert shall send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same and by notice direct the Concessionaire to carry out any or all of the recommendations with such modifications as the Authority may specify.

5. Costs and Expenses

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-K, shall be borne by the Concessionaire.

Annexure I (Schedule – K)
SAFETY GUIDELINES

1. System integrity

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

2. 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 elements comprising the Project Facility and compliance thereof. The statement shall also bring out the nature and extent of staff training and awareness in dealing with such checks and tolerances. Two copies of the statement shall be sent to the Independent Expert within 15 (fifteen) days of the close of every quarter.

3. Emergency

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

4. Fire safety

- 4.1. The Concessionaire shall conform to the standards specified by the US National Fire Protection Association (NFPA) in NFPA-61-B.
- 4.2. To prevent fire in the Project Facility, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.
- 4.3. To deal with incidents of fire, the Concessionaire shall provide a hydrant-based fire-fighting system.

5. Surveillance and Safety Manual

The Concessionaire shall, no later than 60 (sixty) days prior to Final COD, evolve and adopt a manual for surveillance and safety of the Project Facility (the “Surveillance and Safety Manual”), in accordance with Good Industry Practice, and shall comply therewith in respect of the security and safety of the Project Facility, including its gate control, sanitation, fire prevention, environment protection. The Concessionaire shall provide 5 (five) copies each of the Surveillance and Safety Manual to the Authority and the Independent Expert no later than 30 (thirty) days prior to Final COD.

6. Watch and Ward

The Concessionaire shall, at its own expense and in accordance with Good Industry Practice, provide and maintain all lighting, fencing, watch and ward arrangements for the safety and security of the Project Facility and all persons affected by it.

SCHEDULE – L - SELECTION OF INDEPENDENT EXPERT

1. Selection of Independent Expert

- 1.1. The provisions of the Model Request for Proposals for Selection of Technical Consultants, issued by the Ministry of Finance vide OM No. 24(23)/PF-II/2008 dated 21 May, 2009, or any substitute thereof shall apply for selection of an experienced firm to discharge the functions and duties of an Independent Expert. Provided, however, that no entity which is owned or controlled by the Authority shall be eligible for appointment as the Independent Expert hereunder.
- 1.2. In the event of termination of an Independent Expert 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-L**.

2. Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with Schedule-M.

3. Fee and expenses

- 3.1. In determining the nature and quantum of duties and services to be performed by the Independent Expert during the Concession Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 2% (two per cent) of the Overall Total Project Cost, including Equity Support. Payments not exceeding such 2% (two 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 Expert 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 Expert on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

4. Appointment of government entity as Independent Expert

- 4.1. Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Expert; 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 Authority shall not be eligible for appointment as Independent Expert.

SCHEDULE – M- TERMS OF REFERENCE FOR INDEPENDENT EXPERT

1. Scope

- 1.1. These Terms of Reference for the Independent Expert (the “**TOR**”) are being specified pursuant to the Concession Agreement dated [•] (the “**Agreement**”), which has been entered into between the Authority and [•] (the “**Concessionaire**”) to establish Warehousing Facility at [•] in district [•] in the State of [•] on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis, [and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR].
- 1.2. This TOR shall apply to construction, designing, operation and maintenance of the Project Facility.

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 Expert

- 3.1. The role and functions of the Independent Expert shall include the following
 - 3.1.1. : (i) review of the Drawings and Documents as set forth in Paragraph 4;
 - 3.1.2. (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
 - 3.1.3. (iii) review, inspection and testing of Project Facility as set forth in Paragraph 4;
 - 3.1.4. (iv) conducting Tests on completion of construction and issuing Completion Certificate/ Provisional Certificate as set forth in Paragraph 4;
 - 3.1.5. (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
 - 3.1.6. (vi) review, inspection, and monitoring of Divestment Requirements as set forth in Paragraph 6;
 - 3.1.7. (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - 3.1.8. (viii) determining, as required under the Agreement, the period, or any extension thereof, for performing any duty or obligation;
 - 3.1.9. (ix) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
 - 3.1.10. (x) undertaking all other duties and functions in accordance with the Agreement.
- 3.2. The Independent Expert shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Construction Period

- 4.1. The Independent Expert shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, topographical surveys and other surveys conducted as part of the feasibility report and any further revision thereof. The Independent Expert 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 Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days (or such other shorter period, if any, as specified in the Agreement) of receiving such Drawings or Documents.
- 4.3. The Independent Expert shall review the business plan, detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4. The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Project Facility 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 Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6. The Independent Expert 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.
- 4.7. The Independent Expert shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “**Inspection Report**”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works and equipment with the Scope of the Project and the Specifications and Standards.
- 4.8. The Independent Expert may inspect the Project Facility more than once in a month if any lapses, defects, or deficiencies require such inspections.
- 4.9. For determining that the Construction Works conform to Specifications and Standards, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Expert in accordance with Good Industry Practice for quality assurance. For purposes of this Paragraph 4.9, the tests prescribed in the relevant Manuals specified by the Government in relation to structures, buildings, lines, equipment and electrical systems (the “**Quality Control Manuals**”) or any modification/substitution thereof shall be deemed to be tests conforming to Good Industry Practice for quality assurance. The Independent Expert 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.
- 4.10. The sample size of the tests, to be specified by the Independent Expert under Paragraph 4.9, 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 Expert 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.
- 4.11. The timing of tests referred to in Paragraph 4.9, and the criteria for acceptance/ rejection of their results shall be determined by the Independent Expert 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.

- 4.12. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Expert 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 4 shall apply to such tests.
- 4.13. If at any time during the Construction Period, the Independent Expert determines that the Concessionaire has not made adequate arrangements for the safety of workers or any other persons in the zone of construction, or that any work is being carried out in a manner that threatens the safety of the workers or any other persons in the zone of construction, 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.
- 4.14. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and other persons in the zone of construction, it may, by notice in writing, require the Independent Expert to inspect such works, and within 3 (three) days of receiving such notice, the Independent Expert 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.
- 4.15. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert 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.
- 4.16. The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in Schedule-H and issue a Completion Certificate or Provisional Certificate. For carrying out its functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and Schedule-H.
- 4.17. Upon reference from the Authority, the Independent Expert 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.
- 4.18. The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.

5. Operation Period

- 5.1. In respect of the Drawings, Documents and Safety Report received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.
- 5.2. The Independent Expert 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.
- 5.3. The Independent Expert 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.
- 5.4. The Independent Expert shall conduct audits to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators in accordance with the terms of the Concession Agreement.
- 5.5. The Independent Expert shall ensure periodic calibration of equipment as well as periodic check of all scientific testing equipment.
- 5.6. The Independent Expert shall assess the amount of Damages, if any, payable or recoverable, as the case may be, under Clause 23.3, Clause 23.4 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.
- 5.7. . The Independent Expert may inspect the Project Facility more than once in a month, if any lapses, defects, or deficiencies require such inspections.

- 5.8. The Independent Expert 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 Facility 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.
- 5.9. In respect of any defect or deficiency referred to in Paragraph 2 of **Schedule-J**, the Independent Expert 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.
- 5.10. The Independent Expert 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.
- 5.11. The Independent Expert shall examine the request of the Concessionaire for closure of any section of the Project Facility for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in 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 Expert shall monitor the re-opening of such section, and in case of delay, determine the Damages payable by the Concessionaire to the Authority.
- 5.12. The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.4.
- 5.13. In the event that the Concessionaire notifies the Independent Expert of any modifications that it proposes to make to the Project Facility, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6. Termination

- 6.1. 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 Expert shall, in the presence of a representative of the Concessionaire, inspect the Project Facility for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 32.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Project Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 33.2, it shall recommend retention of the required amount in the Escrow Account and the period of retention thereof.
- 6.2. The Independent Expert shall inspect the Project Facility once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire under Article 33, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Independent Expert, it shall make a report in reasonable detail and send it forthwith to the Authority and the Concessionaire.

7. Determination of costs and time

- 7.1. The Independent Expert shall determine the costs, and/or their reasonableness, that are required to be determined by it under the Agreement.
- 7.2. The Independent Expert shall determine the period, or any extension thereof, that is required to be determined by it under the Agreement.

8. Assistance in Dispute resolution

- 8.1. When called upon by either Party in the event of any Dispute, the Independent Expert shall mediate and assist the Parties in arriving at an amicable settlement. 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 Expert shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.

9. Other duties and functions

9.1. The Independent Expert shall perform all other duties and functions specified in the Agreement.

10. Miscellaneous

10.1. The Independent Expert 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.

10.2. A copy of all communications, comments, instructions, Drawings or Documents sent by the Independent Expert to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Independent Expert thereon shall be furnished by the Independent Expert to the Authority forthwith.

10.3. The Independent Expert shall obtain, and the Concessionaire shall furnish in 2 (two) copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Independent Expert, whereupon the Independent Expert shall send 1 (one) of the copies to the Authority along with its comments thereon.

10.4. The Independent Expert 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.

10.5. Upon completion of its assignment hereunder, the Independent Expert 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. 2 (two) copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.

10.6. Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.

10.7. The terms of reference may also include other roles and responsibilities of the Independent Expert as decided by the Authority on case to case basis while issuing the RFP for Independent Expert.

SCHEDULE-N - ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [•] day of [•] 20 [•]

AMONGST

1. [•], a company incorporated under the provisions of the [•] and having its registered office at..... (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [•] (insert name and particulars of Lenders’ Representative) and having its registered office at..... and acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [•] (insert name and particulars of the Escrow Bank) and having its registered office at..... (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted substitutes); and
4. **THE CENTRAL WAREHOUSING CORPORATION**, represented by [•], and having its offices at [•] (hereinafter referred to as the “**Authority**” or “**CWC**” 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 developing a Warehouse Facility at [•] in district [•] in the State of [•] (“**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis, [and a copy of which is annexed hereto and marked as Annexure-A to form part of this Agreement].

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above [and annexed hereto as Annexure-A], and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the

Authority or the Lenders' Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

"Escrow Account" means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

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

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

"Sub-Accounts" means the respective sub-accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month, then appropriated proportionately in such month and retained in the respective subaccounts and paid out therefrom on the Payment Date(s).

1.2. Interpretation

1.2.1. References to Lenders' Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders' Representative, acting for and on behalf of Senior Lenders.

1.2.2. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3. References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

1.2.4. The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement

2. ESCROW ACCOUNT

2.1. Escrow Bank to act as trustee

2.1.1. The Concessionaire hereby appoints the Escrow Bank to act as trustee for the Authority, the Lenders' Representative and the Concessionaire in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2. The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, 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 Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

- 2.3.1.** Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [•] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2.** The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- 2.3.3.** The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5. Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

2.6. Substitution of the Concessionaire

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. DEPOSITS INTO ESCROW ACCOUNT

3.1. Deposits by the Concessionaire

- 3.1.1.** The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:
- a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
 - b) all funds received by the Concessionaire from its share-holders, in any manner or form;
 - c) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
 - d) all payments by the Authority, after deduction of any outstanding Concession Fee.
- 3.1.2.** The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2. Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a) Any 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 under the Concession Agreement, and the balance remaining shall be deposited into the Escrow Account.

3.3. Deposits by Senior Lenders

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

3.4. Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4. WITHDRAWALS FROM ESCROW ACCOUNT

4.1. Withdrawals during Concession Period

4.1.1. At the beginning of every month, or at such shorter intervals as the Lenders' Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) all payments relating to construction of the Project payable in accordance with the terms of the Concession Agreement, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of the Concession 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 pursuant to the Concession Agreement;
- 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

4.1.2. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

4.2. Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- c) outstanding Concession Fee and other payments;
- d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, and any claims in connection with or arising out of Termination;
- e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 33 of the Concession Agreement;
- f) outstanding Debt Service including the balance of Debt Due;
- g) outstanding Subordinated Debt;
- h) incurred or accrued O&M Expenses;
- i) any other payments required to be made under the Concession Agreement; and
- j) balance, if any, in accordance with the instructions of the Concessionaire.

4.3. Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.5. Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 30 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instruction were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5. OBLIGATIONS OF THE ESCROW BANK

5.1. Segregation of funds

Monies and other property received by the Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Escrow Bank in trust for the purposes for which they were received and shall be segregated from other funds and property of the Escrow Bank.

5.2. Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3. Communications and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
- b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

5.4. No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5. Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. ESCROW DEFAULT

6.1. Escrow Default

6.1.1. Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds

into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or

- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2. Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7. TERMINATION OF ESCROW AGREEMENT

7.1. Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the 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 Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8. SUPPLEMENTARY ESCROW AGREEMENT

8.1. Supplementary escrow agreement

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. INDEMNITY

9.1. General indemnity

9.1.1. The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2. The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure

of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

- 9.1.3.** The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. DISPUTE RESOLUTION

10.1. Dispute Resolution

- 10.1.1.** Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to the Dispute Resolution Board as set forth in Clause 37.2. The matters which cannot be resolved through Dispute Resolution Board shall be decided finally by reference to arbitration as set forth in Clause 37.3.
- 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 Delhi 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 the State of 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 authorised representatives of the Parties.

11.5. Waiver

11.5.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

11.6. No third-party beneficiaries

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

11.7. Survival

11.7.1. Termination of this Agreement:

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

11.7.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8. Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10 of this Agreement or otherwise.

11.9. Successors and assigns

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

11.10. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11. Language

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

11.12. Authorised representative

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

11.13. Original Document

This Agreement may be executed in 4 (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.

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS** by the
Lenders' Representative

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

SIGNED, SEALED AND DELIVERED

For and on behalf of **ESCROW BANK** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of

1. [•]

2. [•] Fax No.

SIGNED, SEALED AND DELIVERED

For and on behalf of [•] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of

1. [•]

2. [•]

SCHEDULE-O - PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 27.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “Panel of Chartered Accountants”). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this **Schedule-O**.

2. Invitation for empanelment

The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- 2.1.1. the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act, 2013, of which at least 10 (ten) should have been public sector undertakings;
- 2.1.2. the firm should have at least 5 (five) practising Chartered Accountants on its rolls, each with a minimum experience of 10 (ten) years in the profession;
- 2.1.3. 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; and
- 2.1.4. the firm should have an office in the State of or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3. Evaluation and selection

- 3.1. The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).
- 3.2. 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.

4. 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 scrutinise 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 send its comments, if any, to the Authority within 15 (fifteen) days of receiving the aforesaid panel.

5. 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 10 (ten) 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-O**.

SCHEDULE-P - VESTING CERTIFICATE

1. The [●] (the “**Authority**”) refers to the Concession Agreement dated [●] (the “**Agreement**”) entered into between the Authority and [●] (the “**Concessionaire**”) for [●] (the “**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis.
2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 32.1 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 Warehouse Facility shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this [●] day of [●], 20[●] at [●].

AGREED, ACCEPTED AND SIGNED

For and on behalf of **THE Authority** by:

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

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by

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

In the presence of:

1. [●]

2. [●]

SCHEDULE-Q - SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the [●] day of [●] 20[●].

AMONGST

1. **THE CENTRAL WAREHOUSING CORPORATION**, represented by [●], and having its offices at [●] (hereinafter referred to as the “**Authority**” or “**CWC**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors, and assigns);
2. [●], a [●] incorporated under the provisions of the [●] 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 a Warehouse Facility at [●] in district [●] in the State of [●] (“**Project**”) on Design, Build, Finance, Operate and Transfer (“**DBFOT**”)basis, [and a copy of which is annexed hereto and marked as Annexure-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 IT IS HEREBY AGREED 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 90 (ninety) days;

“**Lenders’ Representative**” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“**Nominated Company**” means a company, within the meaning of the Companies Act, 2013, 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**” means 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 assigns 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 Lenders’ Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

3.2. Substitution upon occurrence of Financial Default

- 3.2.1. Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “**Notice of Financial Default**”) along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this Article 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 30 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders’ Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon

receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

3.3. Substitution upon occurrence of Concessionaire Default

- 3.3.1. Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2. In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days, provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

3.4. Procedure for substitution

- 3.4.1. The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the 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 fulfil 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 develop, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
 - b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
 - c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4. If the Authority has any objection to the transfer of Concession in 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 and in accordance with the provisions of this Agreement and the Concession Agreement.

3.5. Selection to be binding

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in 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 31 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. Realisation 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 Concession 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 fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.
- 7.1.3. The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

7.2. Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8. DISPUTE RESOLUTION

8.1. Dispute Resolution

- 8.1.1. Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to the Dispute Resolution Board as set forth in Clause 37.2. The matters which cannot be resolved through Dispute Resolution board shall be decided finally by reference to arbitration as set forth in Clause 37.3
- 8.1.2. 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 Delhi and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1. Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts in the State 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 Article 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. The address for service of each Party and its facsimile number 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. 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.

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of THE Authority by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS**

by the Lenders' Representative:

(Signature)
(Name)

(Designation)
(Address)
(Fax No.)

In the presence of:

1. [•]

2. [•]