

**Government of India
NITI Aayog
(PPP Vertical)
Sansad Marg, New Delhi - 110001**

17 September 2019

STAKEHOLDERS CONSULTATION

Concession Agreement for Public Private Partnership in Setting up and Operating Automated Inspection and Certification Centres (I&C Centres) for Transport Vehicles

Pursuant to the Motor Vehicles (Amendment) Act, 2019 providing for notification of a date by the Central Government for mandating testing and certification of fitness only at automated testing stations, and the Ministry of Road Transport & Highways 2017-20 Guidelines for setting up of I&C Centres, **NITI Aayog has developed the ‘Concession Agreement Guiding Principles for Setting up and Operating Automated Inspection and Certification Centers for Transport Vehicles’.**

This Concession Agreement has been developed based on international best practices, with the objective of setting up and operating automated I&C Centres with state-of-the-art technology across the country, leveraging private sector investment and efficiencies. Under this envisioned model, the Concessionaire shall be required to incur the necessary CAPEX for setting up the I&C Centre including the requisite equipment, while the Authority shall incur a ‘fee per tested vehicle’ payable to the Concessionaire, which will also be the bidding parameter for selection of the Concessionaire.

The draft Concession Agreement is uploaded on the NITI Aayog website (<https://www.niti.gov.in/documents/model-agreements>). Stakeholders are requested to provide written comments, if any, by or before 1 October 2019. The comments are to be sent in the enclosed format, in electronic/editable form, addressed to Mr. R. K. Bhatheja, Economic Officer (PPPAU), on the email: rk.bhatheja@nic.in. **In this regard, there will be a stakeholder’s meet at NITI Aayog, New Delhi on 15 October 2019 at 11:00am. All those who are interested in attending the meet are requested to send a line of confirmation latest by 7 October 2019 on the aforementioned email.**

Comments on Concession Agreement for Public Private Partnership in Setting up and Operating Automated Inspection and Certification Centres for Transport Vehicles

Name of the comments/ suggestion provider: _____

Designation: _____

Organization: _____

S. No.	Item	Article /Clause Reference	Comment / Suggestion



Public Private Partnership

in

Setting Up and Operating

Automated Inspection and Certification Centers for

Transport Vehicles

CONCESSION AGREEMENT GUIDING PRINCIPLES

September 2019

**NITI Aayog
Government of India**

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Part I
Preliminary

CONCESSION AGREEMENT¹

This AGREEMENT² is made and entered into at [●] on this the [●] day of [month], [year] by and between:

1. **THE GOVERNOR OF [●]**, represented by [●], and having its offices at [●] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part;

AND

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) of the Second Part.

(Collectively, the “**Parties**”)

WHEREAS:

- A. In order to implement the existing vehicle inspection system in India and to bring in more objectivity in testing Transport Vehicles for compliance with safety standards and to check their roadworthiness as per the requirements of the Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989, the Government has decided to set up inspection and certification facility in India with private sector participation. In furtherance to this, the Authority has decided to establish automated inspection and certification centers in the State of [●] on PPP basis.
- B. The Authority has resolved to procure one such automated inspection and certification facility for automated testing of Transport Vehicles at [●] in district [●] in the State of [●] on design, build, develop, finance, operate and transfer (“**DBFOT**”) basis in accordance with the terms and conditions set forth in this Agreement.

¹ **Instructions for Bidders**

The Agreement issued to the Bidders may be customised for bid-specific purposes in accordance with the instructions below:

Note 1: The provisions in curly brackets i.e. {} are to be retained in the Agreement forming part of Bidding Documents and shall be suitably modified by the Bidders after the issue of Letter of Award (LOA) in order to reflect the bid-specific particulars in the Agreement.

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

Note 3: Footnotes marked “£” are to be retained in the Agreement . These footnotes are for guidance of the selected Bidders and shall be omitted before executing the Agreement .

² This Agreement may be customised for project-specific use in accordance with the instructions below:

Note I: Serially numbered footnotes in this Agreement are for guidance of the Authority and should be omitted from the draft Concession Agreement forming part of Bidding Documents.

Note II: All project-specific provisions in this Agreement have been enclosed in square parenthesis and may be modified, as necessary, before issuing the draft Concession Agreement to Bidders.

Note III: The [●] in this Agreement should be substituted by project-specific particulars before issuing the draft Concession Agreement to Bidders.

Note IV: Notes I, II, III and IV shall be omitted prior to issuing of the draft Concession Agreement.

- C. The Authority had accordingly invited proposals by its Request for Qualification dated [●] (the “**Request for Qualification**” or “**RFQ**”) for shortlisting bidders to design, develop, finance, equip, operate and maintain the Project in the identified district on a PPP basis and had shortlisted certain bidders including, *inter alia*, the [selected bidder/ consortium comprising [●] and [●] (collectively the “**Consortium**”) with [●] as its leader].
- D. The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “**Request for Proposals**” or “**RFP**”) from the shortlisted bidders pursuant to the RFQ for undertaking the Project.
- E. After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its letter of acceptance no. [●] dated [●] (hereinafter called the “**LOA**”) for the identified district to the {selected bidder/ [Consortium]} requiring, *inter alia*, the execution of this Agreement within [●] days of the date of issue thereof.
- F. The {selected bidder/ Consortium} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act, 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- G. By its letter dated [●], the Concessionaire has also joined in the said request of the Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/ Consortium} including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the {selected bidder/ Consortium} for the purposes hereof.
- H. The Authority {has agreed to the said request of the selected bidder/ Consortium and the Concessionaire, and has} accordingly agreed to enter into this Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the sufficiency and adequacy 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 46) 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 reenacted;
- (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**” include, unless the context otherwise requires, investigation, design, developing, renovation, refurbishing, augmentation, upgradation, monitoring, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;

- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to “**hour**” shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;
- (j) any reference to day shall mean a reference to a calendar day;
- (k) references to a “**business day**” shall be construed as a reference to a day (other than a Sunday) on which banks in the State where the I&C Facility is situated are generally open for business;
- (l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (m) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (n) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (o) the words importing singular shall include plural and vice versa;
- (p) references to any gender shall include the other and the neutral gender;
- (q) “**lakh**” means a hundred thousand (100,000) and “**crore**” means ten million (10,000,000);
- (r) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (s) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors;
- (t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as 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 the Authority hereunder or pursuant hereto in any manner whatsoever;

- (u) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
- (v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”);
- (y) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence; and
- (z) capitalised terms used in the Agreement, but not defined herein, shall be construed in accordance with Good Industry Practice.

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 3 (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 and errors/discrepancies

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

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

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

- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
- (b) between the Clauses of this Agreement and the Schedules, the Clauses of this Agreement 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

Scope of the Agreement

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 and design of the Project Facilities including the Inspection and Certification Facility having Inspection Lanes with Testing Equipment in conformity with the Specifications and Standards and other provisions of this Agreement;
- (b) construction and procurement of the Project Facilities and construction and procurement of brand new Equipment for the I&C Facility on the Site set forth in **Schedule-A** having the capacity to undertake Vehicle Testing of [●] number of Transport Vehicles at any given point in time in conformity with the Specifications and Standards and other provisions of this Agreement;
- (c) procurement and maintenance of Software to be used for providing the Testing Services in accordance with the Specifications and Standards and other provisions of this Agreement;
- (d) operation and maintenance of the Project Facilities in conformity with the Specifications and Standards and other provisions of this Agreement;
- (e) providing parking facilities for the Transport Vehicles at the Site in conformity with the Specifications and Standards and other provisions of this Agreement;
- (f) provide Testing Services in conformity with the Specifications and Standards and other provisions of this Agreement; and
- (g) performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

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 plan, develop, design, engineer, monitor, procure, finance, equip, operate, maintain and manage the Project at the Site (the “**Concession**”) and provide Testing Services for a period of [20 (twenty) years], commencing from the Appointed Date and ending on the Transfer Date (the “**Concession Period**”), which includes construction and up gradation of the Project Facilities and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement and implement the Project subject to and in accordance with the terms and conditions set forth herein.

[Provided that the Concessionaire shall, at any time no earlier than 5 (five) years, but no later than 3 (three) years prior to the completion of the aforesaid Concession Period of 20 (twenty) years, upon issuing a notice to the Authority, be entitled to an additional Concession Period of [10 (ten) years] on the terms and conditions set out herein and in accordance with the provisions of Clause 35.7.]

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall entitle or oblige the Concessionaire to undertake the following in accordance with the provisions of Applicable Laws and Applicable Permits, during the Concession Period to:

- (a) [procure land, as per specifications laid down in the RFP and this Agreement on registered ownership or [under registered lease or registered license for such duration that the Concessionaire has a continued right to use the land during the Concession Period] for the construction and operation of the Project]³;
- (b) [Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement]⁴;
- (c) plan, design, develop, procure, construct, finance, upgrade, equip, operate, maintain and manage the Project Facilities 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 its nominated agency on the expiry or the early termination of the Concession Period;
- (d) perform and fulfill all of the Concessionaire’s obligations in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
- (e) on and from the Commercial Operation Date and until the Transfer Date, the Concessionaire shall have the right to receive Testing Charges in accordance with the provisions of this Agreement;

³ To be deleted in case the obligation to procure land is on the Authority.

⁴ To be deleted in case the obligation to procure land is on the Concessionaire.

- (f) provide Testing Services to the Transport Vehicles as per the terms and conditions of this Agreement including Specifications and Standards, Good Industry Practice and Motor Vehicles Act, 1988 and Central Motor Vehicle Rules, 1989;
- (g) have exclusive right and authority, during the Concession Period, to provide the Testing Services to the Transport Vehicles in the district of [●] in accordance with the provisions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
- (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 providing Testing Services]⁵;
- (j) neither assign, transfer or sub-let or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Facility nor sell, transfer, exchange, lease 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 36.

3.2 Extension of Concession Period

3.2.1 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.

3.2.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that extension of the Concession Period due to the Concessionaire in accordance with the provisions of Clauses 13.5.4, 32.6.2 and 33.3 is not granted by the Authority for any reason, the Authority shall, within 30 (thirty) days of the expiry of this Agreement, pay to the Concessionaire a lump sum amount computed in accordance with this Clause 3.2.2 in lieu of the Testing Charges that would have been payable to the Concessionaire if the Concession Period were extended in accordance with this Agreement. For computation of the aforesaid lump sum amount payable hereunder, the monthly Testing Charges due and payable for and in respect of the last month of the Concession Period, when such Testing Charges were due and payable, shall be deemed as the base and the amount so determined shall be reduced by 5% (five per cent) for the following month and the same computation shall be repeated for every subsequent month for the purposes hereof. For the avoidance of doubt and by way of illustration, the Parties agree that if the monthly Testing Charges for the last month of the Concession Period is [Rs. 1 crore (Rupees one crore)] and the period of foregone extension is 2 (two) months, the amount payable for and in respect of the first and second months shall be a sum of [Rs. 95 lakh (Rupees ninety five lakh) and Rs. 90.25 lakh (Rupees ninety point two five lakh) respectively]. The Parties further agree that payment for a part month shall be computed on a proportionate basis. The

⁵ To be deleted in case the obligation to procure land is on the Concessionaire.

Parties also agree that the payment of such amount may be recovered by the Concessionaire under and in accordance with the provisions of Article 28.

3.3 Substitution of the Authority

The Parties expressly agree that the Authority may, in pursuance of any re-organisation or restructuring undertaken in pursuance of Applicable Laws, 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 endeavour basis, make such arrangements and enter into such further agreements as may be necessary for performance of their respective obligations hereunder, including the rights and obligations arising out of the provisions of Article 28.

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, 23, 32, 42 and 45, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Clause 9.1, at any time after 15 (fifteen) 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 60 (sixty) days of the notice, or such longer period not exceeding 120 (one hundred and twenty) 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 in accordance with the provisions of Clauses 10.3.1 and 10.3.2]⁶;
- (b) procured Applicable Permits, if any, relating to environmental protection, conservation and forest clearance;
- (c) [hand over the vacant possession of the Site on an as is where is basis. Prior to handover, the Authority shall remove all existing equipment, articles etc. at its own cost from the Site]⁷;
- (d) executed the Default Escrow Agreement and opened and established a Default Escrow Account in accordance with Article 28 of this Agreement.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 90 (ninety) 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) provided an evidence to the Authority that the Performance Security as furnished by the Concessionaire on execution of this Agreement is in full force and effect. For the avoidance of doubt, it is expressly clarified that should the Performance Security have been encashed in accordance with Clause 4.2.1, the Concessionaire shall ensure that the Performance Security has been replenished and such Performance Security is in full force and effect on the Appointed Date;

⁶ To be deleted in case the obligation to procure land is on the Concessionaire.

⁷ To be deleted in case the obligation to procure land is on the Concessionaire.

- (b) executed and procured execution of the Substitution Agreement;
- (c) procured all the Applicable Permits specified in **Schedule-E** unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (d) executed and procured execution of the Escrow Agreement;
- (e) [procured Site for the development of the Project Facilities including access to approach roads and submitted all the required documents regarding ownership/ [leasehold rights/ license rights] to the said parcel of land in compliance with the specifications as per the Specifications and Standards on size, accessibility and other factors specified in the RFP and this Agreement to the satisfaction of the Authority]⁸;
- (f) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (g) achieved Financial Close and delivered to the Authority, documents evidencing the same including 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;
- (h) executed the Default Escrow Agreement and opened and established a Default Escrow Account in accordance with Article 28 of this Agreement;
- (i) delivered to the Authority [from the existing {promoters/selected bidder/Consortium Members}, their respective] confirmation 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
- (j) 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.
- 4.1.6 Upon satisfaction in full of all Conditions Precedent to be satisfied by a Party, the other Party shall forthwith issue to such Party, a certificate setting out the compliances of all Conditions Precedent required to be satisfied by such Party (the “**Certificate of Compliance**”).

⁸ To be deleted in case the obligation to procure land is on the Authority.

4.2 Consequences of Non-fulfillment of Conditions Precedent

Non-fulfillment of Conditions Precedent by the Concessionaire

4.2.1 The Concessionaire hereby agrees and undertakes that it shall procure fulfillment of all Conditions Precedent set out in Clause 4.1.3, within the period specified therein. In the event that (i) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3, for any reason whatsoever, within such period, and (ii) the delay has not occurred as a result of breach of this Agreement by the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.3% (zero point three per cent) of the Performance Security for each day of delay until the fulfilment of such Conditions Precedent; subject to a maximum amount equal to the Bid Security, and upon reaching such maximum amount, the Authority may in its sole discretion and subject to the provisions of Clause 9.2 terminate this Agreement. Provided further that no Damages shall be due or payable by the Concessionaire under this Clause 4.2.1 if such delay in fulfillment of Conditions Precedent has occurred solely as a result of any default or delay by the Authority in procuring fulfillment of Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure.

4.2.2 Upon Termination under Clause 4.2.1, the Authority shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages; provided, however, if fulfillment of Conditions Precedent set forth in Clause 4.1.3 has not been fulfilled by the Concessionaire within the period specified in respect thereof, solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, the Authority shall, upon Termination, return the Performance Security to the Concessionaire.

Non-fulfillment of Conditions Precedent by the Authority

4.2.3 In the event that the Authority does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount equal to the Bid Security.

4.3 Commencement of Concession Period

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

4.4 Deemed Termination upon delay

Without prejudice to the provisions of Clauses 4.2, 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, within a period of 180 (one hundred and eighty) days from 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority as Damages thereof.

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Scope of Services

Subject to and on the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense, [procure land]⁹, procure finance for and undertake the design, procurement, construction, upgradation, equipping, installation, operation and maintenance of the Project Facilities, deliver Testing Services and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 Standards for Performance of Testing Services

The Concessionaire shall discharge its obligations:

- (a) in compliance with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement;
- (b) in accordance with the Specifications and Standards outlined in the Schedules; and
- (c) in a good and workman like manner in accordance with the terms of Applicable Permits and Good Industry Practice.

5.1.3 The Concessionaire shall install, operate and maintain the I&C Facility in accordance with the Specifications and Standards and the Maintenance Requirements such that it is able to undertake Vehicle Testing of [●] number of Transport Vehicles at any given point in time (“**Capacity**”) during each day of the Concession Period.

5.1.4 The Concessionaire shall install, operate and maintain the Project Facility in accordance with the Applicable Law, Specifications and Standards and the Maintenance Requirements such that it shall achieve the Key Performance Indicators.

5.1.5 Testing Procedures & Standards

The Concessionaire shall conduct inspection and Vehicle Testing in accordance with inspection and testing manuals to be provided by the Authority to the Concessionaire from time to time and the Applicable Laws including the Scheme. These manuals shall prescribe *inter alia* the procedure for Vehicle Testing, list of Vehicle Tests to be conducted, methods for conducting the Vehicle Testing, etc.

Without prejudice to the above provisions of this Clause 5.1.5, the Concessionaire shall conduct the tests as set out in **Schedule-D** and thereafter issue a report for each Transport Vehicle tested at the I&C Facility in the format prescribed at **Schedule-U**.

5.1.6 Monitoring and Maintenance

⁹ To be deleted in case the obligation to procure land is on the Authority.

- (a) The Concessionaire shall, prepare and submit at least [•] days prior to COD and thereafter at least [•] days prior to the beginning of each Accounting Year an annual maintenance plan detailing the programmed maintenance works for the Site, Project Facilities and Equipment (the “**Annual Maintenance Plan**”);
- (b) The Concessionaire shall carry out actions as directed by the Authority in respect of repair of defects, Equipment replacement, human resources and other such actions as may be specified;
- (c) The Concessionaire shall maintain appropriate records, documents, data etc. and submit to the Independent Expert, the representative(s) of the Authority and the experts appointed by the Authority, the necessary periodic reports evaluating adherence to Specifications and Standards, as outlined in the Schedules to this Agreement; and
- (d) The Concessionaire shall provide access to the Project Facilities and the Project records to the Independent Expert, representative(s) of the Authority and experts appointed by the Authority.

5.1.7 The Concessionaire shall at all times in addition to and not in derogation of its obligations set out in this Agreement, observe and comply with the following:

- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
- (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes, know-how and systems used or incorporated into the Project Facility;
- (c) perform and fulfil its obligations under the Financing Agreements;
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) 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 equipment and facilities comprising the Project Facility are operated and maintained in accordance with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice;
- (g) 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;
- (h) the Concessionaire shall ensure the compliance of all Specifications and Standards by all the Contractors;

- (i) all Applicable Laws, rules and regulations framed thereunder, including those relating to the Pollution Control Board Norms and guidelines for solid waste management;
- (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 of this Agreement, in accordance with the provisions thereof;
- (l) the health and safety norms as may be applicable; and
- (m) all or any other requirements whatsoever that may be incidental to or otherwise related with the Project.

5.1.8 Maintenance of Records

5.1.8.1 The Concessionaire shall maintain requisite records of Transport Vehicles which visit the I&C Facility for Vehicle Testing.

5.1.8.2 The Concessionaire shall maintain records and submit periodic reports evaluating adherence to Specifications and Standards outlined in Schedules to this Agreement to the Authority.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. The Concessionaire shall, within 7 (seven) days of receipt of comments by the Authority, make amendments to the Project Agreements and resubmit the same to the Authority for its review and comments (which the Authority may review but shall not be under any obligation to undertake such review and provide comments). Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever. The Concessionaire shall ensure that all the Project Agreements are executed within [90 (ninety) days] of the date of this Agreement and in any event prior to the Appointed Date.

5.2.3 The Concessionaire shall not make any replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority. For the avoidance of doubt, the Authority acknowledges and agrees

that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

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

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority.

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

- (a) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 25% (twenty-five per cent) of the total Equity of the Concessionaire; or
- (b) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him,

shall be subject to prior written 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, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “**acquirer**”, “**control**” and “**person acting in concert**” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as 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 situated in India or abroad, having ultimate control of not less than 25% (twenty five per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

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

5.5 Staffing and Manpower Training

- 5.5.1 The Concessionaire shall recruit and manage all the personnel required to perform each step of the Testing Services in the manner as prescribed under **Schedule-D**.

- 5.5.2 The Concessionaire shall adopt an effective human resources policy in accordance with the Applicable Laws.
- 5.5.3 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.
- 5.5.4 The Concessionaire shall appoint suitable officers/staff/representative to work and supervise the Project and to deal with the Authority.
- 5.5.5 The Concessionaire shall be responsible to provide requisite training to its personnel at the Project Facility.
- 5.5.6 The Concessionaire shall ensure:
- (a) the compliance of all Applicable Laws and Specifications and Standards by all the Contractors;
 - (b) the staff, attendants and motor vehicle inspector employed at the I&C Facility are trained as per the requirements of the Applicable Laws in performing the Testing Services and the motor vehicles inspector are certified by such agencies as notified by the Authority from time to time;
 - (c) that its personnel is courteous and helpful to the attendants of the Transport Vehicle.
- 5.5.7 The Concessionaire shall prepare a training calendar for its personnel for each Accounting Year, and if directed by the Authority, nominate such personnel to undertake training at appointed centers established by the Authority. For the avoidance of doubt, the costs for such training at the appointed centers shall be borne by the Concessionaire
- (hereinafter referred to as, “**Manpower Training**”).

5.6 Accidents

In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform the concerned civil and police authorities and also the Authority. The Concessionaire’s responsibilities with regard to the construction and operation of the Project shall in no way be diminished by informing the above officials, and the Concessionaire shall be required to take expeditious action for the medical and legal aspects notwithstanding any delay on the part of the officials to give any instructions. The Concessionaire shall preserve the Site of such accident intact until the completion of all legal formalities. The Concessionaire shall then arrange for the expeditious removal of wreckage or debris, and for cleaning the Site. If any portion of the Project Facilities suffers any damage, the Concessionaire shall, with the consent of the Authority, arrange for the repair and rectification thereof within a reasonable time as may be agreed by the Parties.

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

Any communication to the news media made by the Concessionaire shall provide only enough information to satisfy public concern and the Concessionaire shall neither make any admissions nor accept any liability in any such communications.

5.7 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.

5.8 Sole purpose of the Concessionaire

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

5.9 Branding of Concessionaire

Subject to the prior written approval of the Authority, the Project Facility or any part thereof may be branded to advertise, display or reflect the name or identity of the Concessionaire or its shareholders. For the avoidance of doubt, it is agreed that the Concessionaire may, in its discretion, display its own name below the name of the Project Facility in parenthesis as “(operated by [●])”. It is further agreed that the Project Facility shall be known, promoted, displayed and advertised by the name of [●].

5.10 Water and Electricity

5.10.1 The Concessionaire shall procure water and electricity connection and shall pay all the invoices relating to such connections as and when due. It is agreed that such connection shall be in the name of the Concessionaire. The Concessionaire shall, on and before the COD, set up a meter at its own cost to measure the power and water consumption.

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

5.10.3 The Concessionaire shall be responsible to procure power and water back-up systems at the Project Facility to maintain uninterrupted power and water supply at all times.

5.11 Obligations relating to taxes

The Concessionaire shall pay, at all times during the subsistence of this Agreement, all taxes, levies, duties, cesses and all other statutory charges in respect of the Project Facility. Provided, however, that all payments made by the Concessionaire with respect to goods and services tax, if any, levied on or in respect of the Testing Services provided to the Authority shall be reimbursed by the Authority upon receipt of particulars thereof.

5.12 Auditing the I&C Facility

- 5.12.1 The Concessionaire shall maintain books recording the procedure followed at the I&C Facility for Vehicle Testing, the status of Equipments including Testing Equipments and Software, and requisite details in relation to Manpower Training.
- 5.12.2 The Concessionaire expressly agrees to furnish to its Statutory Auditor the details of the records maintained in furtherance of Clause 5.12.1 and the reports issued to the Authority post Vehicle Testing.
- 5.12.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the procedure undertaken at the I&C Facility for Vehicle Testing, (b) the status and availability of Equipments and Software, (c) Manpower Training, and (d) reports issued to the Authority post Vehicle Testing.
- 5.12.4 The Authority shall have the right to inspect the records of the Concessionaire during office hours and obtain copies of such records duly certified by the Statutory Auditors, for verification. In the event of any discrepancy or error being found, the Authority shall be entitled to impose [Penalty Points].

5.13 Obligations relating to information

- 5.13.1 Without prejudice to the provisions of Applicable Laws and this Agreement, upon receiving a notice from the Authority for any information that it may reasonably require or that it considers may be necessary to enable it to perform any of its functions, the Concessionaire shall provide such information to the Authority forthwith and in the manner and form required by the Authority.
- 5.13.2 After receiving a notice from the Authority for reasoned comments on the accuracy and text of any information relating to the Concessionaire's activities under or pursuant to this Agreement which the Authority proposes to publish, the Concessionaire shall provide such comments to the Authority in the manner and form required by the Authority.

5.14 Obligations relating to Detailed Project Report

The Concessionaire shall prepare, finalize and submit the Detailed Project Report including the design, Project Completion Schedule and the Construction Quality Plan to the Authority within 90 (ninety) days of execution of this Agreement, and receive the approval of the Independent Expert and the Authority for the Detailed Project Report within 120 (one hundred and twenty) days of the date of this Agreement but in any event prior to the Appointed Date.

ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder. The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide all 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, use its reasonable efforts to assist 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) [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]¹⁰;
- (d) ensure that Testing Charges are paid by the Authority to the Concessionaire in a timely manner, in accordance with the mechanism outlined in Clause 27.1.1;
- (e) [pay any property tax or any tax, cess or duties in relation to the Project and the Site on which it is established]¹¹;
- (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement; and
- (g) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement.

6.2 Obligation relating to allotment of Transport Vehicles to inspection and certification facilities

The Authority shall ensure that the online system to be used by Transport Vehicle owner for booking slots for getting their Transport Vehicle tested in the State will function/ work in a manner that it allots Transport Vehicles to all inspection and certification facilities in a district

¹⁰ To be deleted in case obligation to procure land for the Project is on the Concessionaire.

¹¹ To be deleted in case obligation to procure land for the Project is on the Concessionaire.

in a city in a State (including the I&C Facility) on a non-discriminatory and non-discretionary basis.

6.3 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; provided, however, that the refinancing hereunder shall always be subject to the prior consent of the Authority, which consent shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1 (one) year prior to expiry of the Concession Period.

**ARTICLE 7
REPRESENTATIONS AND WARRANTIES**

7.1 Representations and Warranties of the Concessionaire

7.1.1 The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, 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 or otherwise 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 any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give

rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3; and that the existing promoters /selected bidder/ Consortium Members, together with its/their Associates, hold not less than 33% (thirty three per cent) of its/their issued and paid up Equity as on the date of this Agreement; and that no Member of the Consortium whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the RFQ shall, during the Construction Period, hold less than 26% (twenty-six per cent) of such Equity which shall also be no less than 5% (five per cent) of the Total Project Cost;
- (l) the {selected 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) {selected bidder/ Consortium Members and its/ their} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the LOA, 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; and
- (q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects;

- (r) all undertakings and obligations of the Concessionaire arising from the RFQ and RFP or otherwise shall be binding on the Concessionaire as if they form part of this Agreement; and
- (s) [it has good and valid right to the Site for the development and operation of the Project.]¹²

7.2 Representations and Warranties of the Authority

7.2.1 The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) [it has good and valid right to the Site, and has power and authority to grant a license in respect thereto to the Concessionaire.]¹³

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 obligation of either Party under this Agreement.

¹² To be deleted in case the obligation to procure land is on the Authority.

¹³ To be deleted in case the obligation to procure land is on the Concessionaire.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposal, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, [issues related to land acquisition]¹⁴ 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 representations whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumption, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, [the promoter/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 specifically set out in this Agreement, all risk relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or consequences thereof.

¹⁴ To be deleted in case the obligation to procure land is on the Authority.

Part III

Development and Operations

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder, provide to the Authority no later than 90 (ninety) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to [Rs. [●] (Rupees [●])] ¹⁵ in the form set forth in **Schedule-F** (the “**Performance Security**”). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 90 (ninety) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the 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 Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level of the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 35. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 120 (one hundred and twenty) 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 35.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period commencing from the Appointed Date until the Commercial Operation Date.

9.4 Deemed Performance Security

¹⁵ To be calculated @ approximately 5% (five per cent) of the amount specified in the definition of Total Project Cost.

The Parties expressly agree that upon release of the Performance Security in accordance with the provisions of Clause 9.3, a substitute performance security for a like amount shall be deemed to be created under this Clause 9.4, as if it is a Performance Security under Clause 9.1 for and in respect of the entire Concession Period (the “**Deemed Performance Security**”). The Deemed Performance Security shall be unconditional and irrevocable, and shall, notwithstanding anything to the contrary contained in Clause 29.3, constitute the first and exclusive charge on an equivalent balance in the Escrow Account and the payments accrued or payments due and payable subsequently, as the case may be, to the Concessionaire under this Agreement and over which the Authority shall have the first and exclusive charge and shall be entitled to appropriate any amount therefrom as if it is an appropriation from the Deemed Performance Security under Clause 9.5. For the avoidance of doubt, the Parties agree that no amounts shall be earmarked, frozen or withheld in the Escrow Account for securing payment of any potential Damages that may fall due at a subsequent date, and only the amounts which shall have become due and payable by the Concessionaire upon occurrence of Concessionaire Default shall be liable to appropriation hereunder.

9.5 Appropriation of Deemed Performance Security

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

9.6 References 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, and the amount so determined shall be appropriated from the Bid Security or Deemed Performance Security, as the case may be.

ARTICLE 10 SITE

10.1 The Site

The site of the Project shall comprise of the land 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**”)]¹⁶. For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the land 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 free of encumbrance for carrying out any site inspections, surveys and investigations 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 site inspections, survey and investigations carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the License Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the real estate which is described, delineated and shown in **Schedule-A** hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The Concessionaire shall pay to the Authority a sum equivalent to [●]^{17E} as license fee (“**License Fee**”), to be paid in advance for each month on or before the 7th (seventh) day of each month. In the event, the Concessionaire fails to pay the License Fee within the said time period, then the Authority shall have the right to deduct such unpaid amount from the Testing Charges for such month payable by it to the Concessionaire in accordance with Article 27.

10.2.4 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 of this Agreement for any reason whatsoever.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration

¹⁶ To be deleted in case the obligation to procure land is on the Concessionaire.

^{17E} Amount of License Fee to be calculated as per 8-10% of the circle rate.

of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

- 10.2.6 It is expressly agreed that trees on the Licensed Premises are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.
- 10.2.7 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the existing roads within the Site or an alternative thereof are open to traffic at all times during the Concession Period.

10.3 Procurement of the Licensed Premises

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Licensed Premises and prepare a memorandum containing an inventory of the Licensed Premises including the vacant and unencumbered land, buildings, structures, road works, trees and any other immovable property on or attached to the Licensed Premises. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Licensed Premises to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 2 (two) counterparts (each of which shall constitute an original), by the authorized representatives of the Parties shall, subject to the provisions of Clause 10.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Licensed Premises during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Licensed Premises as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.
- 10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 10% (ten per cent) of the total area of the Licensed Premises required and necessary for the Project Facility. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project Facility without which the Completion Certificate may not be granted. The Parties also acknowledge and agree that the conditions specified in this Clause 10.3.2 shall not be modified or waived by either Party.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Licensed Premises and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of

this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 5,000 (Rupees five thousand) per day for every 500 (five hundred) square meters or part thereof, commencing from the 91st (ninety first) day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Expert in accordance with Good Industry Practice; provided that the issue of Completion Certificate shall not be affected or delayed on account of vacant access to any part of the Licensed Premises not being granted to the Concessionaire or any construction on such part of the Licensed Premises remaining incomplete on the date of tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within 90 (ninety) days of the Appointed Date shall be completed on or before the Scheduled Completion Date. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Expert hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.3.3.

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional land required for ancillary buildings or for construction of works specified in Change of Scope Order issued under Article 16, in accordance with the provisions of this Agreement and upon procurement thereof, such land shall vest in the Authority and form part of the Licensed Premises; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from the Appointed Date or the date of Change of Scope Order, as the case may be, require the Authority to initiate and undertake proceedings for acquisition of such land under the provisions of Applicable Laws and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordance with Applicable Laws; provided also that the land to be acquired by the Authority hereunder as a part of the Licensed Premises shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with accordingly, save and except that Damages for delay in procurement thereof shall commence after a period of 270 (two hundred and seventy) days from the Appointed Date, instead of 90 (ninety) days as specified in Clause 10.3.4.

10.4 No Sub-Leases/License

The Concessionaire shall not sub-lease/license the whole or any part of the Site, licensed to it by the Authority, to any person in any form or under any arrangement, device or method, without the prior written consent of the Authority.

10.5 Site to be free from Encumbrances

The Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations. 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.

10.6 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.

10.7 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 Project Facility and the performance of its obligations under this Agreement.

10.8 Access to the Authority, 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, the Independent Expert, any experts appointed by the Authority and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.9 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Licensed Premises shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the Authority or the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall procure that the instructions hereunder are issued by it or the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary.]¹⁸

10.1 *Procurement of the Site by the Concessionaire*¹⁹

¹⁸ To be deleted in case the obligation to procure is on the Concessionaire.

¹⁹ Clause 10.1 shown in italics, may be used where the Authority does not propose to provide the real estate required for construction of the Project Facility. In that event, Clause 10.1 to 10.4 above may be substituted by Clause 10.1 as in italics. The contents of Schedule-A may also be substituted to briefly describe the area and other particulars of the real estate procured by the Concessionaire for the Project Facility. Also. All references to Licensed Premises in this Agreement, in such case, will need to be replaced with Site.

- 10.1.1 *The Concessionaire represents and warrants that it has, [prior to the execution of this Agreement/ [30 (thirty) days] of the date of this Agreement], procured the real estate required for the Project Facility, as described in Schedule-A (the “Site”), and in respect of which it has a clear right and title for the purposes of the Project, save and except the real estate referred to in Clause 10.1.4.*
- 10.1.2 *The Concessionaire shall procure the Site, free of any Encumbrances, to develop, operate and maintain the Site, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, 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 purposes whatsoever.*
- 10.1.3 *Within [●] days of this Agreement and in any event prior to the Appointed Date, the Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, road works, tree and any other immovable property on or attached to the Site. The said memorandum will be signed in 2 (two) counterparts (each of which shall constitute an original), by the authorized representative of the Parties.*
- 10.1.4 *In the event the Concessionaire has not procured a clear right and title to any part of the Site and is included in Schedule-A, such part shall be specified in reasonable detail in an appendix appended to the memorandum (the “Appendix”). For the avoidance of doubt, the Parties agree that the Appendix shall not include any land which is necessary and required for construction of any essential element or part of the Project Facility.*
- 10.1.5 *On and after signing the memorandum referred to in Clause 10.1.3, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost or expenses.*

**ARTICLE 11
UTILITIES, 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 diversion.

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 or alignment within or outside the Site if and only if such utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project Facility. The cost of such shifting shall be borne by the Concessionaire, and in the event of any delay in shifting thereof, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

11.3 Felling of trees

The Authority shall assist the Concessionaire in procuring the Applicable Permits for felling of trees to be identified by the Concessionaire for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project Facility. 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 costs and expense in respect of felling of trees shall be borne by the Concessionaire and any revenues thereof shall be paid to the Authority.

ARTICLE 12 CONSTRUCTION OF THE PROJECT

12.1 Obligations prior to commencement of construction

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

- (a) submit to the Authority and the Independent Expert its detailed design, construction methodology, quality assurance procedures, and the procurement, monitoring and construction time schedule for completion of the Project in accordance with the Project Completion Schedule;
- (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, the Applicable Laws and Applicable Permits; and
- (d) make its own arrangements for quarrying of materials needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Drawings

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, 3 (three) copies each of all Drawings to the Independent Expert for review;
- (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 design and monitoring, including field construction criteria related thereto, are in conformity with the Specifications and Standards;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey 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 hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent 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 12.2.1, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the Project, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.2.1 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 3 (three) hard copies and in micro film form or in such other medium 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 Project and setback lines, if any, of the structures forming part of Project Facilities.

12.3 Construction of Project

- 12.3.1 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 and shall complete the same within 545 (five hundred and forty five) days from the Appointed Date (“**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Construction Works shall be completed on or before the Scheduled Completion Date. 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 Project Completion Schedule, the Specifications and Standards, Applicable Laws including the applicable architectural controls, building byelaws 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.
- 12.3.2 During the Construction Period, the Concessionaire shall carry out or cause to be carried out the Construction Works with the skill, care and diligence to be expected of appropriately qualified and experienced professional designers, monitors and Contractors with experience of work 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 the Project Completion Schedule and Construction Quality Plan, and the Specifications and Standards set out herein.
- 12.3.3 The Concessionaire shall construct the Project in accordance with the Project Completion Schedule set forth in **Schedule-G**. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Project Milestone in **Schedule-G**, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority; it shall pay Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project

Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule-G** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule-G** has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.3.3 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.3 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

- 12.3.4 In the event that Construction Works is not completed and COD does not occur within 180 (one hundred and eighty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

During the Construction Period, the Independent Expert shall (individually or jointly with the Authority as may be required) inspect the Project at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. 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.

13.3 Tests

13.3.1 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 that the owner or builder of such works would normally undertake in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent 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. Provided, however, that the Independent Expert may, instead of carrying out the tests specified hereunder, at its option decide to witness, or participate in, any of the tests to be undertaken by the Concessionaire for its own quality assurance in accordance with Good Industry Practice, and in such an event, the Concessionaire shall cooperate with, and provide the necessary assistance to, the Independent Expert for discharging its functions hereunder. 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 development shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent 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 13.3 shall be repeated

until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Expert forthwith.

13.4 Delays during Construction

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

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Expert to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of 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 hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works, 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. 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 13.5.2 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 32.7, 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.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Expert shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule in accordance with the recommendations of the Independent Expert. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

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

ARTICLE 14 COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Independent Expert of its intent to subject the Project to Tests. The date and time of each of the Tests shall be determined by the Independent Expert in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Expert may reasonably require for conducting the Tests. In the event the Concessionaire and the Independent Expert fail to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Expert, and in the event the Independent Expert delays the Tests hereunder, the Authority shall impose exemplary penalties on the Independent Expert and shall ensure that Tests are completed in time either by the Independent Expert or any substitute thereof.

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

14.2 Completion Certificate

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

14.3 Rescheduling of Tests

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable. Provided, however, that the Concessionaire shall be excused for the delay in Tests arising hereunder if such delay is not solely attributable to the Concessionaire.

14.4 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.

14.5 Safety certification prior to COD

The Concessionaire shall, not later than 30 (thirty) days prior to the likely 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 Facility 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 test shall be borne entirely by the Concessionaire.

ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

15.1.1 The Project Facility shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “**COD**” or the “**Commercial Operation Date**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to receive the Testing Charges in accordance with Article 27, provided, however, that the entry of Project into commercial service shall always be subject to compliance with the provisions of Clause 14.5.

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 issuance of Completion Certificate, or where such delay occurs in the issuance of the Completion Certificate by the Independent Expert for any reason attributable to the Independent Expert or the Authority, as the case may be, the Concessionaire may declare COD and notify the Authority forthwith. In the event of any Dispute relating to the declaration of COD hereunder, the Dispute Resolution Procedure shall apply.

15.2 Damages for delay

Subject to the provisions of Clause 12.3, if Completion Certificate is not issued prior to the 90th (ninetieth) day after the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.25% (zero point two five per cent) of the amount of the Performance Security for delay of each day until the Completion Certificate is issued. In the event that Construction Works is not completed within 150 (one hundred and fifty) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement (“**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Testing Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefor in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project Facility and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period, and
 - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; [provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent 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 Payment for Change of Scope

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

- 16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, [subject to an aggregate ceiling of 0.25% (zero point two five per cent)] of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1.

16.4 Restriction on certain works

- 16.4.1 Notwithstanding anything to the contrary contained in this Article 16, 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; 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.

- 16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 10% (ten per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 25% (twenty five per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

- 16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award such works or services to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection

criteria, subject to payment of 1% (two per cent) of the bid amount to the Authority²⁰, and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten per cent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not undertake any works or services under this Clause 16.5.1 if such works or services cause a Material Adverse Effect on the Concessionaire.

- 16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in 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 16.5.

²⁰ The Authority shall transfer 75% (seventy-five) of the amount so received to the first ranked bidder whose bid has been matched by the Concessionaire.

ARTICLE 17
OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project and provide Testing Services for the Transport Vehicles coming to the I&C Facility in accordance with this Agreement either by itself, [or through the O&M Contractor who may be appointed only after taking prior written approval of the Authority] and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement including the Specifications and Standards, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Concessionaire hereunder shall include the following:

- (a) ensure and procure that at all times during the Operation Period, the Project Facilities are operated in accordance with the service quality manual as set forth in **Schedule-K** (the “**Service Quality Manual**”) provided by the Authority or any agency (such as ARAI/ ICAT/ CIRT) authorized by the Authority or as may be updated or modified from time to time during the Concession Period and provided to the Concessionaire;
- (b) provide a monthly status report on the Key Performance Indicators as included in **Schedule-D**;
- (c) undertake, in compliance with the terms and conditions of this Agreement, including the Specifications and Standards, Applicable Laws, Applicable Permits, the Maintenance Manual, the Service Quality Manual and Good Industry Practice (i) the operation of the Project Facility and provide Testing Services to the Transport Vehicles by itself, and (ii) the maintenance of the Project Facilities by itself [or through an O&M Contractor(s)] who may be appointed only after taking prior written approval of the Authority;
- (d) conducting Vehicle Testing of Transport Vehicles as per the standards and manuals prescribed by the Authority or any nodal agency authorized by the Authority such as ARAI, ICAT or CIRT;
- (e) provide for adequate parking facilities at the Project Facilities to ensure that at any given point in time Transport Vehicles equivalent to the Capacity can be parked therein;
- (f) procuring that the Capacity of the I&C Facility shall at all times be to undertake Vehicle Testing of [●] number of Transport Vehicles;
- (g) minimizing disruption to the Project in the event of accidents or other incidents affecting the safety and use of the Project Facility by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project and for providing the Testing Services;

- (i) maintaining a public relations unit to interface with and attend to suggestions from the Transport Vehicle attendants at the I&C Facility, government agencies, media and other agencies;
- (j) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Applicable Laws and Good Industry Practice; and
- (k) maintaining reliability in operating the Project Facility.

17.1.2 The Concessionaire shall remove promptly from the Project Facility all surplus construction machinery and materials, waste materials, rubbish and other debris (including, without limitation, accident debris) and keep the Project Facility in a clean, tidy and orderly condition, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

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 Requirements and Service Requirements

17.2.1 The Concessionaire shall procure that at all times during the Operation Period; the Project conforms to the maintenance requirements including Project Facility management, infrastructure maintenance and Equipment maintenance set forth in **Schedule-K** (the “**Maintenance Requirements**”).

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

17.3 Maintenance Manual

17.3.1 The Concessionaire shall undertake regular and preventive maintenance of the Project in conformity with the maintenance manual as set forth in **Schedule-K** (“**Maintenance Manual**”) as provided by the Authority, and Safety Requirements and Good Industry Practice.

17.3.2 The Maintenance Manual, which shall outline the preventive, scheduled and reactive maintenance provisions, may be revised and updated by the Authority or any agency (such as ARAI/ ICAT/CIRT) authorized by the Authority from time to time during the Concession Period.

17.4 Maintenance Programme

17.4.1 Not later than 45 (forty-five) days prior to the beginning of each Accounting Year during the Operation Period, 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, Service

Requirements, Service Quality Manual, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) routine maintenance schedule;
- (c) arrangements and procedures for carrying out urgent repairs;
- (d) criteria to be adopted for deciding maintenance needs;
- (e) intervals and procedures for carrying out inspection of all elements of the Project;
- (f) intervals at which the Concessionaire shall carry out periodic maintenance;
- (g) arrangements and procedures for carrying out safety related measures;
- (h) intervals for major maintenance works and the scope thereof; and
- (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 Independent Expert shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Service Requirements and Maintenance Requirements, Service Quality Manual, 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 Safety Requirements, Service Requirements and 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 the Authority may, in its discretion, demand a smaller sum as Damages, if in its opinion, the breach has been cured promptly and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.6 Authority's right to take remedial measures

17.6.1 In the event the Concessionaire does not maintain and/or repair the Project or any part thereof in conformity with the Safety Requirements, Service Requirements, Maintenance Requirements, Service Quality Manual, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Expert, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt, the right of the Authority under this Clause 17.6.1 shall be without prejudice to its rights and remedies provided under Clause 17.5.

17.6.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 17.6.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.6.2 and debit the same to O&M Expenses.

17.7 Overriding powers of the Authority

17.7.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Safety Requirements, Service Requirements and Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to any person or property including the Transport Vehicles or owners or attendants of the Transport Vehicles, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.7.2 In the event that the Concessionaire, upon notice under Clause 17.7.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.7.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.6 along with the Damages specified therein.

17.7.3 In the event of a national emergency, civil commotion or any other act specified in Clause 32.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 32. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may

issue in pursuance of the provisions of this Clause 17.7.3, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.8 Restoration of loss or damage to Project

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

17.9 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Safety Requirements, Service Requirements, Maintenance Requirements and Good Industry Practice; provided that the Concessionaire shall notify the Independent Expert of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Expert may make within 15 (fifteen) days of receiving the Concessionaire's proposal.

17.10 Advertising on the Project Facility

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding violates Applicable Laws. All advertising on the Project Facility shall also conform to Good Industry Practice.

17.11 Safety, breakdowns and accidents

17.11.1 The Concessionaire shall ensure safe conditions for the provision of Testing Services for the Transport Vehicles, and in the event of unsafe conditions, damage, breakdowns and accidents, it shall follow the relevant operating procedures and undertake removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.11.2 The Concessionaire's responsibility for rescue operations on the Project Facility shall include safe evacuation of all persons from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the safe operations of the Project Facility

17.12 De-commissioning due to Emergency

17.12.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project Facility, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project Facility for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency. For the avoidance of doubt, the Parties agree that in the event the Authority does not approve the de-

commissioning of the Project Facility by the Concessionaire under this Clause 17.12.1, it may refer the matter to the Independent Expert for determination of the facts and if any Dispute remains thereafter, the Dispute Resolution Procedure shall apply.

- 17.12.2 The Concessionaire shall re-commission the operations of the Project Facility or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project Facility and shall notify the Authority of the same without any delay.
- 17.12.3 Any de-commissioning or closure of any part of the Project Facility and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.13 Section closure

- 17.13.1 Upon notice given by the Authority to this effect prior to commencement of an Accounting Year, the Concessionaire shall, save and except as provided in Clause 17.12, not schedule a closure of any part of the Project Facility at any time during a continuous period of 90 (ninety) days as may be specified by the Authority for and in respect of such Accounting Year.
- 17.13.2 Save and except as provided in Clause 17.12, the Concessionaire shall not shut down or close any part of the Project Facility for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Authority. Such approval shall be sought by the Concessionaire through a written request to be made to the Authority at least 7 (seven) days before the proposed closure of such section and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Authority shall grant permission with such modifications as it may deem necessary.
- 17.13.3 Upon receiving the permission pursuant to Clause 17.13.2, the Concessionaire shall be entitled to shut down the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 1% (one per cent) of the average daily Testing Charges for the immediately preceding month to the month in which such section closure occurs, for each day of delay until the section has been re-opened for operations.

17.14 Unscheduled Maintenance

Any maintenance, repair or rectification of the Project Facility not forming part of scheduled maintenance shall be deemed to be unscheduled maintenance (the “**Unscheduled Maintenance**”). For the avoidance of doubt, the Parties agree that any forced closure of the whole or any part of the Project Facility under the provisions of Clause 17.12 shall be deemed to be Unscheduled Maintenance. It is further agreed that any closure, suspension or reduction of the Capacity of the I&C Facility arising out of Unscheduled Maintenance shall be deemed as non-availability of the Capacity and excluded from the computation of the actual available capacity.

17.15 Installation and operation of CCTV

The Concessionaire shall install and operate a closed circuit television system to monitor the Project Facility and such other parts of the Project Facility as may be necessary and expedient for operation of the Project.

17.16 Major Overhaul

The Concessionaire may, as and when necessary, undertake Major Overhaul of the I&C Facility, but in no case more than once in every 5 (five) years, in accordance with a schedule to be notified by the Concessionaire to the Authority.

17.17 Calibration of Equipment

The Concessionaire shall undertake calibration of Equipment as per the standards of the original equipment manufacturer of such Equipment.

17.18 Barriers and Diversion

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

**ARTICLE 18
SAFETY REQUIREMENTS**

18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Transport Vehicles or any individual on or about the Project. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirements set forth in **Schedule-L** (the “**Safety Requirements**”).
- 18.1.2 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire.

ARTICLE 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Expert, a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality 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.

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

- (a) Key Performance Indicators as per Article 24 herein achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables expected in the succeeding month along with strategies for addressing the same and for otherwise improving the Project Facility's operational performance; and
- (c) key financial parameters for the month, as benchmarked against the monthly budget, the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Reports of unusual occurrence

19.2.1 [Prior to the close of each day], the Concessionaire shall furnish to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences, if any, on the Project Facility relating to the safety and security of the Project Facility and the Transport Vehicles. A weekly and monthly summary of such reports shall also be sent within 7 (seven) days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.2.1, accidents and unusual occurrences at the Project Facility shall include:

- (a) death or injury to any person;
- (b) any damage or obstruction on the Project Facility;
- (c) any damage or obstruction to the Transport Vehicles;
- (d) disablement of any element or system of the Project Facility during operation thereof;
- (e) communication failure affecting the operation of the Project Facility;
- (f) smoke, fire, theft, trespass or other breach of security on the Project Facility;
- (g) flooding of the Project Facility; and
- (h) such other relevant information as may be reasonably required by 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 19.2.1, has occurred on that day.

- 19.2.2 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.

19.3 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 Service Requirements, Maintenance Requirements, Maintenance Manual, Service Quality 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.

19.4 Tests

For determining that the Project conforms to the Service Requirements, Maintenance Requirements and Safety Requirements, the Authority or 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.

19.5 Remedial measures

- 19.5.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.4 and furnish a report in respect thereof to the Independent 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 works once every week until such works are completed in conformity with this Agreement.

- 19.5.2 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 Safety Requirements, Service Requirements and Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the Project conforms to the Safety Requirements, Service Requirements and 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.

ARTICLE 20 SECURITY OF THE PROJECT FACILITY

20.1 Security

20.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the Project Facility in accordance with the provisions of this Agreement, the Authority 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 Facility for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences in such manner and to such extent as it may reasonably determine; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services for the Project Facility and such agreement may *inter alia* provide for sharing of costs as may be agreed upon.

20.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Project Facility and shall be responsible for the security arrangements for the Project Facility in order to maintain orderly conduct of its business and the security thereof.

20.1.3 The Concessionaire shall abide by and implement any instructions of the Authority for enhancing the security of the Project Facility. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Government's actions or the actions of any organisation authorised by the Government other than those resulting from wilful or grossly negligent acts or omissions of the Government or of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them for the security of the Project Facility, without unduly or unreasonably disrupting the operations of the Project Facility or interfering with the exercise of rights or fulfilment of obligations by the Concessionaire under this Agreement. The Concessionaire agrees that it shall extend its full support and cooperation to the Authority and to the other organisations authorised by the Government in discharge of their obligations for and in respect of the security of the Project Facility.

20.1.4 The Authority agrees that it shall, at the request of the Concessionaire, cause the Government to procure and provide the services of security forces of the Government on a best effort basis.

20.1.5 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents are allowed free access to the Project Facility without any unreasonable interference by the personnel of the Authority or the Government, including the security personnel employed by or on behalf of the Government.

20.2 Insurance Premium

The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Project Facility is maintained such that the level of risk premium under insurance covers (if any) that is to be borne by the Concessionaire shall be at the lowest possible rate. The Parties hereto agree that in the event of a significant rise in such risk premium arising primarily out of a change in the security environment, the Concessionaire shall, notwithstanding anything to the contrary contained in this Agreement, be entitled to pass on 50% (fifty per cent) of such increase to the Authority.

ARTICLE 21
CHANGE IN SPECIFICATIONS AND TECHNOLOGICAL UPGRADATION

21.1 Modification of Specifications

Notwithstanding anything to the contrary contained in this Agreement, the Parties expressly agree and acknowledge that the Authority may, from time to time, introduce technical improvements or new specifications for the Project Facility (the “**Modified Specifications**”).

21.2 Effect of modification in Specifications

In the event that the Authority introduces any Modified Specifications which require material alterations in the Project Facility, the Concessionaire shall undertake the same as a Change of Scope under and in accordance with the provisions of Article 16; provided, however, that in the event that such Change in Scope causes any increase or decrease, as the case may be, in the O&M Expenses of the Concessionaire, the Testing Charges shall be modified in accordance with the principles of Change in Law under and in accordance with the provisions of Article 39.

ARTICLE 22 INDEPENDENT EXPERT

22.1 Appointment of Independent Expert

The Authority shall appoint a consulting engineering firm substantially in accordance with the selection criteria set forth in **Schedule-M**, to be the independent consultant under this Agreement (the “**Independent Expert**”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority shall appoint an Independent Expert for a further term of 3 (three) years in accordance with the provisions of **Schedule-M**, and such procedure shall be repeated after expiry of each appointment.

22.2 Duties and functions

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

22.2.2 The Independent Expert shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in **Schedule-N**.

22.2.3 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.

22.2.4 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.

22.3 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-M**, 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.

22.4 Termination of appointment

22.4.1 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 22.1.

22.4.2 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 the 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 22.1.

22.5 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.

22.6 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.

22.7 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 authorise 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 22.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

**ARTICLE 23
TECHNOLOGY UPGRADATION**

23.1 Technology Upgradation

- 23.1.1 The Concessionaire shall implement at its own cost, a technology watch throughout the Concession Period so as to allow the Project to benefit from technical advancement and/or technology upgrades in connection with the Equipment at the I&C Facility for rendering the Testing Services. The technology upgradation shall include information about any offers to buy back and replace or upgrade the Equipment that the Concessionaire may receive from any third party and that would apply during the Concession Period or within [•] days of the expiry of the Concession Period or early termination of this Agreement. The Concessionaire shall present the findings of the technological upgradation to the Authority in the form of a written report for review at least once every [•] months. For the avoidance of doubt, it is clarified that the cost of providing the benefit of technology watch to the Authority shall be at the sole cost and expense of the Concessionaire.
- 23.1.2 In the event that any Party believes that the replacement and/or upgrade of any Equipment is likely to have a positive impact on the quality of the Testing Services or the cost of performing the Testing Services (a “**Replacement**”), the Concessionaire shall submit either on its own initiative or within [•] days of the Authority’s request for the same, a written memorandum equivalent to that referred to in Clause 16.2.3 and the resulting process shall comply with the provisions of Article 16.

ARTICLE 24
KEY PERFORMANCE INDICATORS

24.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Project Facility and provide the Test Services such that it achieves or exceeds the performance indicators specified in this Article 24 (the “**Key Performance Indicators**”) and **Schedule-D** hereto.

24.2 Vehicles Testing Efficiency

The Concessionaire shall procure that during the Operation Period, the number of Transport Vehicles for which Vehicle Tests are being conducted per hour is not less than [●] number of Transport Vehicles, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.2.

24.3 Capacity Availability

The Concessionaire shall ensure that during the Operation Period, the capacity of I&C Facility available for Vehicle Testing is not less than the Capacity, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.3 hereto.

24.4 Compliance with the procedure for Vehicle Testing

The Concessionaire shall comply with the procedure for Vehicle Testing in accordance with the provisions of this Agreement including as specified in Annex-I to **Schedule-D** and instructions issued by the Authority from time to time, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.4.

24.5 Staffing and Manpower Training

The Concessionaire shall comply with staffing and Manpower Training obligations in accordance with the provisions of Clause 5.5 hereto, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.5 hereto.

24.6 Vehicle Testing cycle time

The Concessionaire shall ensure that during the Operation Period, the time taken for Vehicle Testing from the time it enters the I&C Facility and till the time the Vehicle Testing is complete and the Transport Vehicle is ready to be taken out of the I&C Facility does not exceed [●] hours per Transport Vehicle, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.6 hereto.

24.7 Efficiency of the Equipment

The Concessionaire shall procure that during the Operation Period, the efficiency of the Equipments used for Vehicle Testing is maintained at such levels so as to conduct Vehicle Testing on [●] number of Transport Vehicles per hour, failing which Damages shall be payable to the Authority in accordance with the provisions of Clause 27.7.

24.8 Monthly report

The Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with the Key Performance Indicators specified in this Article 24 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Project Facility. The monthly report shall include a quantification of the Damages to be calculated in accordance with Article 27.

Part IV
Financial Covenants

**ARTICLE 25
FINANCIAL CLOSE**

25.1 Financial Close

- 25.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 120 (one hundred and twenty) days²¹ from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 90 (ninety) days, subject to payment of Damages to the Authority [in a sum calculated at the rate of 0.05% (zero point zero five per cent) of the Performance Security for each day of delay]; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 120 (one hundred and twenty) 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 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 4.2.1.
- 25.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

25.2 Termination due to failure to achieve Financial Close

- 25.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 32.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 25.1.1 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 this Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the Parties have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 25.2.1 shall not apply.
- 25.2.2 Upon Termination under Clause 25.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred due to Force Majeure or as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, release the Bid Security or Performance Security, as the case may be, forthwith along with the Damages due and payable under Clause 4.2.3. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by the Performance Security, the Authority shall be entitled to encash therefrom an amount equal to the Bid Security.

²¹ This period should confirm with the period specified in Clause 4.1.3.

**ARTICLE 26
CONCESSION FEE**

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “**Concession Fee**”) a sum of Rs. 1 (Rupee one) per annum, at the beginning of each year.

ARTICLE 27 TESTING CHARGES

27.1 Testing Charges

- 27.1.1 The Authority shall pay to the Concessionaire a sum determined in accordance with the provisions of this Article 27 as the monthly charge for provision of Testing Services, and shall be equivalent to the Testing Rate multiplied by the number of Transport Vehicles tested in such month (“**Testing Charges**”). For the avoidance of doubt, the Testing Charges shall be payable by the Authority on a monthly basis as per provisions of Clause 27.10.
- 27.1.2 The Testing Rate for the Accounting Year in which COD occurs will be {•} (“**Base Testing Rate**”), and the same shall be revised annually in accordance with the provisions of this Article 27. The Parties agree that the Base Testing Rate hereunder has been fixed with reference to the Accounting Year [•].
- 27.1.3 The Testing Rate for each subsequent Accounting Year shall be revised annually to reflect the variation in Price Index occurring between the Reference Index Date for January of the year specified in Clause 27.1.2 and the Reference Index Date for the month of January preceding the Accounting Year for which such revision is undertaken (“**Testing Rate**”).

27.2 Damages for lower Vehicle Testing efficiency

In the event the number of Transport Vehicles for which Vehicle Tests are being conducted per hour in a month is less than the number specified in Clause 24.2, the Concessionaire shall pay to the Authority Damages equivalent to Deficient Transport Vehicles multiplied by [•]% ([•] per cent)²² of Testing Rate.

For the purposes of this Clause 27.2, Deficient Transport Vehicles is calculated as follows:

[•] number of Transport Vehicles to be tested per hour as specified in Clause 24.2 for the relevant month less actual number of Transport Vehicles tested for the said hour in the month.

27.3 Damages for non-availability of Capacity

In the event the capacity of the I&C Facility available for Vehicle Testing in a month is less than the Capacity for such month, the Concessionaire shall pay to the Authority Damages equivalent to Deficient Capacity multiplied by [•]% ([•] per cent)²³ of Testing Rate for the relevant Accounting Year.

For the purposes of this Clause 27.4, Deficient Capacity means:

Capacity for the relevant month less actual available Capacity i.e. equivalent to the actual number of Transport Vehicles for which Vehicle Testing has been conducted in the said month.

27.4 Damages for non-compliance with the procedure for Vehicle Testing

²² The percentage shall be equal to the proportion of the amount retained by the Authority from the testing fee charged by the RTO for Vehicle Testing prior to paying Testing Charges to the Concessionaire.

²³ The percentage shall be equal to the proportion of the amount retained by the Authority from the testing fee charged by the RTO for Vehicle Testing prior to paying Testing Charges to the Concessionaire.

In the event the Concessionaire fails to comply with the procedure for Vehicle Testing in accordance with the provisions of this Agreement including as specified in Annex-I to **Schedule-D** and instructions issued by the Authority from time to time, the Concessionaire shall pay to the Authority Damages equivalent to [5% (five per cent)] of the Testing Charges payable to the Concessionaire in accordance with the provisions of Clause 27.1 for the relevant month in which the non-compliance occurs.

27.5 Damages for non-compliance of staffing and Manpower Training obligations

In the event the Concessionaire fails to comply with the staffing and Manpower Training obligations in accordance with the provisions of Clause 24.5 hereto, the Concessionaire shall pay Damages to the Authority which shall be equivalent to [5% (five per cent)] of the Testing Charges payable to the Concessionaire in accordance with the provisions of Clause 27.1 for the relevant month in which the non-compliance occurs.

27.6 Damages for higher Vehicle Testing cycle time

In the event the Vehicle Testing cycle time exceeds the time specified in Clause 24.6, the Concessionaire shall pay to the Authority Damages equivalent to [5% (five per cent)] of the Testing Charges payable to the Concessionaire in accordance with the provisions of Clause 27.1 for the relevant month in which the default occurs.

27.7 Damages for lower efficiency of the Equipments

In the event the Equipments used for Vehicle Testing are unable to conduct Vehicle Testing on such number of Transport Vehicles as has been specified in Clause 24.7, the Concessionaire shall pay to the Authority Damages equivalent to Deficient Transport Vehicles multiplied by [●]% ([●] per cent)²⁴ of Testing Rate. For the purposes of this Clause 27.7, Deficient Transport Vehicles will have the meaning as prescribed in Clause 27.2.

27.8 Audit and payment of Damages

27.8.1 Save and except as expressly provided in this Agreement, the Independent Expert shall:

- (a) within 7 (seven) days of the close of each month falling after COD, conduct an audit based on documents to be made available by the Concessionaire and the Authority, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators, Deficient Transport Vehicles and Deficient Capacity; and
- (b) within 15 (fifteen) days of the close of each quarter falling after COD, conduct a physical audit at the Project Facility, to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators, Deficient Transport Vehicles and Deficient Capacity.

27.8.2 Upon completion of the audit under the provisions of Clause 27.8.1, the Independent Expert shall compute and communicate to the Concessionaire and the Authority, by written notice, the Damages payable by the Concessionaire.

²⁴ The percentage shall be equal to the proportion of the amount retained by the Authority from the testing fee charged by the RTO for Vehicle Testing prior to paying Testing Charges to the Concessionaire.

27.8.3 The Parties agree that the Damages shall be due and payable within 30 (thirty) days of the date of their determination by the Independent Expert under this Clause 27.8 and any errors thereof shall be corrected and reconciled within 60 (sixty) days of the close of the relevant Accounting Year. The Parties further agree that the Authority shall be entitled to set off the Damages against the Testing Charges or any other amounts payable by the Authority during the subsequent months.

27.9 Taxes and duties

27.9.1 It is expressly agreed by the Parties that the Testing Charges shall be inclusive of all taxes and duties, save and except the taxes and duties specified in Clause 27.9.2. It is further agreed that the Concessionaire shall pay all taxes and duties, including the taxes and duties specified in Clauses 27.9.2, in accordance with Applicable Laws.

27.9.2 The Testing Charges payable by the Authority under this Article 27 shall be exclusive of goods and services tax, or any replacement thereof, if applicable, and any goods and services tax thereon shall be paid by the Concessionaire and reimbursed by the Authority upon submission of necessary particulars by the Concessionaire.

27.9.3 Any payment to be made by the Authority shall be subject to tax deduction at source, if required to be made by the Authority as per Applicable Laws.

27.10 Billing and payment

27.10.1 Commencing from the month following the month in which COD occurs, the Concessionaire shall, by the 5th (fifth) day of such and each succeeding month (or, if such day is not a Business Day, the immediately following Business Day), submit in triplicate to the Authority, an invoice in the agreed form (the “**Monthly Invoice**”) signed by the authorised signatory of the Concessionaire setting out the computation of the Testing Charges to be paid by the Authority to the Concessionaire in respect of the immediately preceding month in accordance with the provisions of this Agreement.

27.10.2 The Concessionaire shall, with each Monthly Invoice submit, (a) a certificate that the amounts claimed in the invoice are correct and in accordance with the provisions of the Agreement; (b) proof of actual number of Transport Vehicles subjected to Vehicle Testing in such month along with copies of test reports submitted; (c) official documents in support of the variation in Price Index as specified in Clauses 27.1.3; (d) detailed calculations of the Damages to the extent provided by the Independent Expert in accordance with the provisions of Clause 27.8; (e) details in respect of taxes/duties payable/reimbursable in accordance with the provisions of this Agreement; (f) details in respect of other Damages payable in accordance with the provisions of this Agreement; and (g) the net amount payable under the Monthly Invoice.

27.10.3 The Authority shall, within 30 (thirty) days of receipt of a Monthly Invoice in accordance with Clause 27.10.1 (the “**Payment Due Date**”), make payment of the amount claimed directly, through electronic transfer, to the Escrow Account as notified by the Concessionaire to the Authority in accordance with the terms of this Agreement, save and except any amounts which it determines as not payable or disputed (the “**Disputed Amounts**”).

27.10.4 All Damages and any other amounts due and payable by the Concessionaire in accordance with the provisions of this Agreement may be deducted from the Testing Charges due and payable

to the Concessionaire and in the event the deductions hereunder exceed the Testing Charges in that month, the balance remaining shall be deducted from the Testing Charges due and payable to the Concessionaire for the immediately following month.

27.11 Disputed Amounts

27.11.1 The Authority shall, within 10 (ten) days of receiving an invoice, notify the Concessionaire of the Disputed Amounts, with particulars thereof. Within 7 (seven) days of receiving such notice, the Concessionaire shall present any information or evidence as may reasonably be required for determining that such Disputed Amounts are payable. The Authority may, if necessary, meet a representative of the Concessionaire for resolving the dispute and in the event that the dispute is not resolved amicably, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, even if a dispute is resolved amicably, any amount paid after the Payment Due Date shall be deemed as delayed payment for the purposes of payment of interest thereon. For the avoidance of doubt, the Authority shall be entitled to raise a dispute regarding any Disputed Amounts, whether due or already paid in accordance with this Agreement, at any time.

27.11.2 If any amount is payable by either Party to the other Party upon determination of a dispute regarding any Disputed Amount under the Dispute Resolution Procedure, such amount shall be deemed to be payable on the date when it first became due under this Agreement, and interest for the period of delay shall be due and payable at the rate specified in Clause 27.12.

27.12 Delayed payments

All amounts due and payable to the Concessionaire under the provisions of this Agreement shall be paid within the period set forth in Clause 27.10. In the event of delay beyond such period, the Authority shall pay interest for the period of delay, calculated at the rate specified in Clause 45.4.

27.13 Discount for early payment

The Parties expressly agree that in the event the Authority pays the Testing Charges within 15 (fifteen) days of the date of submission of the invoice thereof, the Authority shall be entitled to deduct 0.5% (zero point five per cent) of the amount specified in the Monthly Invoice by way of discount for early payment.

ARTICLE 28
PAYMENT SECURITY MECHANISM

28.1 Default Escrow Account

- 28.1.1 The Authority and the Concessionaire shall, prior to the Appointed Date, execute a default escrow agreement with the Authority's bank substantially in the form specified in **Schedule-O** (the "**Default Escrow Agreement**") for the establishment and operation of the default escrow account (the "**Default Escrow Account**") in favour of the Concessionaire. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where the Authority receives the testing fees for Transport Vehicles availing Vehicle Testing (the "**Default Escrow Bank**"). The Authority expressly agrees and undertakes that throughout the term of the Concession Period, the testing fees from the Transport Vehicles owners for conducting Vehicle Testing at all the automated inspection and certification centers in the city of [•] shall continue to be deposited at the Default Escrow Bank or any substitute thereof that the Parties may by mutual agreement determine, and a sum equivalent to [•] number of Transport Vehicles multiplied by the Base Testing Rate ("**Maximum Monthly Payment**") from the testing fees received by the Authority shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 28.1 and the Default Escrow Agreement.
- 28.1.2 The Authority and the Concessionaire shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at **Schedule-V** (the "**Deed of Hypothecation**"), whereby the Authority shall hypothecate to the Concessionaire Maximum Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.
- 28.1.3 The Parties acknowledge and agree that during the period commencing from the 25th (twenty fifth) day of every month and until discharge of any Monthly Invoice due and payable on or prior to that day, an amount equal to Average Monthly Testing Charges shall be withheld in the Default Escrow Account for payment to the Concessionaire against such Monthly Invoice and the balance remaining shall be available to the Authority for withdrawal or transfer in accordance with the provisions of the Default Escrow Agreement.
- 28.1.4 The Authority shall procure that the Concessionaire has the first priority charge on the testing fees from the owners of the Transport Vehicle availing Vehicle Testing, deposited into the Default Escrow Account, in accordance with the terms of the Default Escrow Agreement and the Deed of Hypothecation, but not exceeding the Maximum Monthly Payment for and in respect of any month.
- 28.1.5 The Parties agree and acknowledge that upon Termination and on failure of the Authority to make the Termination Payment within 30 (thirty) days of demand by the Concessionaire, revenues equal to the Maximum Monthly Payment, deposited into the Default Escrow Account in accordance with the provisions of this Agreement and the Default Escrow Agreement, shall be appropriated every month and paid to the Concessionaire until discharge of the Termination Payment and any interest thereon. For the avoidance of doubt, the Authority expressly agrees and undertakes that it shall continue to deposit the testing fees received from the owner of Transport Vehicles being subject to Vehicle Testing at the I&C Facility into its account with

the Default Escrow Bank until its liability for and in respect of the Termination Payment is fully discharged.

28.2 Letter of Credit

- 28.2.1 The Authority shall, no later than 30 (thirty) days prior to the likely date of COD, provide to the Concessionaire, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Maximum Monthly Payment (the “**Letter of Credit**”), which may be drawn upon by the Concessionaire for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in **Schedule-P** and shall come into effect on COD, and shall be modified once every year to reflect the revision in Testing Rate in accordance with the provisions of this Agreement.
- 28.2.2 The Letter of Credit shall be procured by the Authority from a bank where the Authority deposits the testing fees received from the owner of Transport Vehicles for availing Vehicle Testing, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Authority.
- 28.2.3 In the event of Authority’s failure to pay the Monthly Invoice before the 27th (twenty seventh) day of the month in which the relevant Payment Due Date occurs, the Concessionaire may, in its discretion, invoke the Letter of Credit for recovery of the amount due, whereupon the Default Escrow Bank shall, without any reference to the Authority, pay the amount due upon the Concessionaire presenting the following documents, namely:
- (a) a copy of the Monthly Invoice which has remained unpaid; and
 - (b) a certificate from the Concessionaire to the effect that the Monthly Invoice is in accordance with this Agreement and that the amount due has remained unpaid.
- 28.2.4 In the event that the amount covered by the Letter of Credit is at any time less than the Testing Charges or is insufficient for recovery of payment due against the Monthly Invoice, the Authority shall, within a period of 15 (fifteen) days from the date on which such shortfall occurred, cause the Letter of Credit to be replenished and reinstated to the extent specified in Clause 28.2.1. For the avoidance of doubt, the Parties agree that the Letter of Credit shall not be revised solely on account of revision in Testing Rate, expect to give effect to such revision once in every 2 (two) years.
- 28.2.5 The Parties may, by mutual agreement, substitute the Letter of Credit by an unconditional and irrevocable bank guarantee or any equivalent instrument as may be mutually agreed upon.

ARTICLE 29 ESCROW ACCOUNT

29.1 Escrow Account

29.1.1 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.

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

29.2 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 payments by the Authority, including Testing Charges.

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

29.3 Withdrawals during Concession Period

29.3.1 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 Facility;
- (b) all payments relating to construction of the Project Facility, 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) monthly proportionate provision of Debt Service due in an Accounting Year;
- (f) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;

- (g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (h) any reserve requirements set forth in the Financing Agreements; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire.

29.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 29.3.1, except with the prior written approval of the Authority.

29.4 Withdrawals upon Termination

29.4.1 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 Facility;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire;
- (d) retention and payments relating to the liability for defects and deficiencies set forth in Article 40;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire.

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 29.4.1 until a Vesting Certificate has been issued by the Authority under the provisions of Clause 36.5.

29.4.2 The provisions of this Article 29 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 29.4.1 have been discharged.

ARTICLE 30 INSURANCE

30.1 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 the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice (the “**Insurance Cover**”). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be 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.

30.2 Insurance Cover

Without prejudice to the provisions contained in Clause 30.1, the Concessionaire shall, during the Operations 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 Facility;
- (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.

30.3 Insurance for Transport Vehicles

Subject to the provisions of Clause 30.4, the Concessionaire shall effect and maintain during the Operation Period, such insurances for such maximum sums as may be specified by the Authority to cover any damage to or loss of Transport Vehicles and such other 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 Operation Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured.

30.4 Notice to the Authority

Not later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 30. 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.

30.5 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 30 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

30.6 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.

30.7 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 30 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.

30.8 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, *inter alia*, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

30.9 Application of insurance proceeds

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

30.10 Compliance with conditions of insurance policies

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

ARTICLE 31 ACCOUNTS AND AUDIT

31.1 Audited accounts

- 31.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including the revenues recovered, Testing Charges, and all incomes derived/collected by it from or on account of the Project Facility and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its balance sheet, cash flow statement and profit and loss account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 31.1.2 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.
- 31.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) receipts on account of Testing Charges, and (b) such other information as the Authority may reasonably require.

31.2 Appointment of auditors

- 31.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 5 (five) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in **Schedule-R**. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 31.2.2 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.
- 31.2.3 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 anytime, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

31.3 Certification of claims by Statutory Auditors

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

31.4 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 31.4 shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

31.5 Monthly Review by Statutory Auditors

The Statutory Auditors shall review claims in connection with, or relating to receipts, income, payments, costs, expenses, accounts or audit and any matter incidental thereto, on a monthly basis.

31.6 Dispute resolution

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

Part V
Force Majeure and Termination

ARTICE 32 FORCE MAJEURE

32.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 32.2, 32.3 and 32.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

32.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 32.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any delay or failure of an overseas contractor to deliver any critical equipment required for the Project Facility and not available in India if such delay or failure is caused outside India by an event specified in sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;
- (e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

32.3 Indirect Political Event

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

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

32.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 39 and its effect, in financial terms, exceeds the sum specified in Clause 39.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorisation, no objection

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

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

32.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 32 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

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

32.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 32.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

32.6 Effect of Force Majeure Event on the Concession

32.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 4.1.3 for fulfillment of all Condition Precedents set out therein and in Clause 25.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

- 32.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:
- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
 - (a) after COD, whereupon the Concessionaire is unable to perform the Testing Services despite making best efforts or it is directed by the Authority or any Governmental Instrumentality to suspend the aforesaid services during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period equal in length to the period during which the Concessionaire was prevented from providing the Testing Services on account thereof; provided that in the event of reduction of Capacity of I&C Facility on account of partial suspension of Testing Services which cause the number of Transport Vehicles to be subject to Vehicle Testing on any day to decline below 90% (ninety per cent) of the average daily number of Transport Vehicles available for Vehicle Testing, the Authority shall extend the Concession Period in proportion to the loss of such number of Transport Vehicles not undergoing Vehicle Testing due to Force Majeure.

32.7 Allocation of costs arising out of Force Majeure

- 32.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.
- 32.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (“**Force Majeure Costs**”) shall be allocated and paid as follows:
- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
 - (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
 - (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

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

- 32.7.3 Notwithstanding anything contained in this Clause 32.7, if during the occurrence of a Force Majeure Event, the Capacity or part thereof of the I&C Facility is deemed available for any

reason whatsoever, the Authority shall not be liable to make any payments towards Force Majeure Costs in respect thereof to the Concessionaire under this Clause 32.7.

- 32.7.4 Save and except as expressly provided in this Article 32, 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.

32.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 32, 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.

32.9 Termination Payment for Force Majeure Event

- 32.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

- 32.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 110% (one hundred and ten per cent) of the Adjusted Equity.

- 32.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 35.3.2 as if it were an Authority Default.

32.10 Dispute resolution

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

32.11 Excuse from performance of obligations

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

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

32.12 Relief for Unforeseen Events

32.12.1 Upon occurrence of an unforeseen event, situation or similar circumstances not contemplated or referred to in this Agreement, and which could not have been foreseen by a prudent and diligent person (the “**Unforeseen Event**”), any Party may by notice inform the other Party of the occurrence of such Unforeseen Event with the particulars thereof and its effects on the costs, expense and revenues of the Project. Within 15 (fifteen) days of such notice, the Parties shall meet and make efforts in good faith to determine if such Unforeseen Event has occurred, and upon reaching agreement on occurrence thereof, deal with it in accordance with the provisions of this Clause 32.12.

32.12.2 Upon determination of the occurrence of an Unforeseen Event, the Parties shall make a reference to a conciliation tribunal which shall comprise one member each to be nominated by both Parties from among persons who have been Judge of a High Court and the conciliators so nominated shall choose a chairperson who has been a Judge of the Supreme Court or Chief Justice of a High Court.

32.12.3 The conciliation tribunal referred to in Clause 32.12.2 shall conduct its proceedings in accordance with the provisions of Article 42 as if it is an arbitration proceeding under that Article, save and except as provided in this Clause 32.12.

32.12.4 The conciliation tribunal referred to in this Clause 32.12 shall conduct preliminary proceedings to satisfy itself that -

- (a) an Unforeseen Event has occurred;
- (b) the effects of such Unforeseen Event cannot be mitigated without a remedy or relief which is not contemplated in the Agreement; and
- (c) the Unforeseen Event or its effects have not been caused by any Party by any act or omission or its part,

and if the conciliation tribunal is satisfied that each of the conditions specified hereinabove is fulfilled, it shall issue an order to this effect and conduct further proceedings under this Clause 32.12.

- 32.12.5 Upon completion of the conciliation proceedings referred to in this Clause 32.12, the conciliation tribunal may by a reasoned order make recommendations which shall be:
- (a) based on a fair and transparent justification;
 - (b) no greater in scope than is necessary for mitigating the effects of the Unforeseen Event;
 - (c) of no greater duration than is necessary for mitigating the effects of the Unforeseen Event; and
 - (d) quantified and restricted in terms of relief or remedy.
- 32.12.6 Within 15 (fifteen) days of receiving the order referred to in Clause 32.12.5, the Parties shall meet and make efforts in good faith to accept, in whole or in part, the relief or remedy recommended by the conciliation tribunal for mitigating the effects of the Unforeseen Event and to procure implementation of the Project in accordance with the provisions of this Agreement. In pursuance hereof, the Parties may enter into a Memorandum of Understanding (the “**MoU**”) setting forth the agreement reached hereunder, and the terms of such MoU shall have force and effect as if they form part of this Agreement.

**ARTICLE 33
COMPENSATION FOR BREACH OF AGREEMENT**

33.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 33.5, 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 33.1 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.

33.2 Compensation for default by the Authority

Subject to the provisions of Clause 33.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which compensation or Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material default but shall not include loss of revenues or debt repayment obligations, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

33.3 Extension of Concession Period

Subject to the provisions of Clause 33.5, in the event that a material breach or default of this Agreement set forth in Clause 33.2 causes delay in achieving COD or leads to reduction in the realisation of Testing Charges, as the case may be, the Authority shall, in addition to payment of compensation under Clause 33.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the payment of Testing Charge was reduced on account thereof, as the case may be; and in the event of reduction in Testing Charge where the daily collection is less than 90% (ninety per cent) of the average daily Testing Charge, the Authority shall, in addition to payment of compensation hereunder, extend the Concession Period in proportion to the loss of Testing Charge on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in realisation of Testing Charge, as compared to the average daily Testing Charge for 4 (four) days shall entitle the Concessionaire to extension of 1 (one) day in the Concession Period.

33.4 Compensation to be in addition

Compensation payable under this Article 33 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

33.5 Mitigation of costs and damage

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

ARTICLE 34
SUSPENSION OF CONCESSIONAIRE’S RIGHTS

34.1 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, and (ii) exercise such rights itself or authorise any other person to exercise the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and Lender’s Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

34.2 Authority to act on behalf of Concessionaire

34.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, provide the Testing Services and operate the Project Facility under and in accordance with this Agreement, and the Testing Charges 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 Termination Payments.

34.2.2 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 licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 34.1 to use during Suspension, all intellectual property belonging to or licenced to the Concessionaire with respect to the Project Facility and its design, engineering, construction, operation and maintenance and which is used or created by the Concessionaire in performing its obligations under the Agreement.

34.3 Substitution of Concessionaire

34.3.1 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 34.1, for enabling the Lenders’ Representative to exercise its rights of substitution on behalf of Senior Lenders.

34.4 Termination

- 34.4.1 At any time during the period of Suspension under this Article 34, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 34.3, the Authority shall within 15 (fifteen) days of receipt of such, notice, terminate this Agreement under and in accordance with Article 35.
- 34.4.2 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 34.1, this Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.

**ARTICLE 35
TERMINATION**

35.1 Termination for Concessionaire Default

35.1.1 Subject to Applicable Laws and 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 (a “**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, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of **Schedule-G** and continues to be in default for 90 (ninety) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.4;
- (f) the Concessionaire is in breach of the Maintenance Requirements, Service Requirements;
- (g) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (h) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (i) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified in the Substitution Agreement;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

- (k) accumulation of [●] Penalty Points under Clause 5.12.4;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by this Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) a resolution for insolvency of the Concessionaire is passed, or any petition for insolvency of the Concessionaire is initiated before a court (including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 and such application has not been withdrawn within 14 (fourteen) days of the date thereof;
- (r) if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (s) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (t) 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, 1956/ Companies Act, 2013 and a liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

- (iii) each of the Project Agreements remains in full force and effect;
- (u) the Concessionaire fails to fulfil its obligations under Article 24;
- (v) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false or the Concessionaire is at any time hereafter found to be in breach thereof;
- (w) the Concessionaire submits to the Authority any statement which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (x) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement;
- (y) the Concessionaire issues a Termination Notice in violation of the provisions of this Agreement;
- (z) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

35.1.2 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 35.1.3.

35.1.3 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 35.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement. Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire.

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

35.2 Termination for Authority Default

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

- (a) the Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire, and the Concessionaire is unable to recover any unpaid amounts through the Default Escrow Account and the Letter of Credit, within the period specified in this Agreement;
- (c) [the Authority fails to provide any land which is necessary and required for construction of any essential element or part of the Project]²⁵; or
- (d) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

35.2.2 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 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

35.3 Termination Payment

35.3.1 The Concessionaire expressly agrees that, upon Termination on account of a Concessionaire Default during the Concession Period, no Termination Payment shall be due and payable by the Authority to the Concessionaire. Upon such Termination, if Site is procured by the Concessionaire then the Concessionaire shall be entitled to retain the Site and Project Assets.

[Upon such termination, if Licensed Premises is provided by the Authority to the Concessionaire, then the Concessionaire shall handover the possession of the Site to the Authority in accordance with the provision of Clause 35.5 and remove the Project Assets from the Site in accordance with Article 36.]

35.3.2 If the Authority has provided access right to the Licensed Premises to the Concessionaire in accordance with the provisions of this Agreement, then, the Concessionaire may decide to transfer the Project Assets to the Authority and if the Authority elects to purchase the Project

²⁵ To be deleted in case the obligation to procure land is on the Concessionaire.

Assets then, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) 100% (one hundred per cent) of Debt Due less any insurance proceeds; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

Provided that if either the Concessionaire decides not to sell the Project Assets to the Authority or if the Authority decides not to purchase the Project Assets, then the Authority shall pay to the Concessionaire by way of Termination Payment, an amount equal to:

- (a) 100% (one hundred per cent) of Debt Due less any insurance proceeds to the Concessionaire; and
- (b) 25% (twenty five per cent) Adjusted Equity.

[35.3.2 If the Site is procured by the Concessionaire, then upon Termination on account of an Authority's Default, the Authority shall pay to the Concessionaire by way of Termination Payment, an amount equal to:

- (c) 100% (one hundred per cent) of Debt Due less any insurance proceeds; and*
- (d) 25% (twenty five per cent) of Adjusted Equity.]²⁶*

35.3.3 The Concessionaire expressly agrees that upon Termination on expiry of the Concession Period or the extended Concession Period in accordance with Clause 35.7, no Termination Payment shall be due and payable by the Authority to the Concessionaire.

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

35.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 35 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.

35.4 Certain limitations on Termination Payment

35.4.1 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. For the avoidance of doubt, the Parties agree that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on

²⁶ To be included only in case land is being procured by the Concessionaire.

COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. The Parties further agree that in the event such disaggregation is not notified to the Authority, the Equity and Debt Due shall be arrived at by adopting the proportion between debt and equity as specified in the Financing Agreements. The Parties also agree that for the purposes of computing Termination Payment, the Debt Due shall at no time exceed 85% (eighty-five per cent) of the Total Project Cost.

- 35.4.2 The amount payable in respect of any Debt Due expressed in foreign currency shall be computed at the Reference Exchange Rate for conversion into Indian currency from the relevant foreign currency as on the date of Termination Payment. Provided, however, that the provisions of this Clause 35.4.2 shall not apply if the Concessionaire does not notify the particulars of any foreign currency loans within 60 (sixty) days of the date of conversion of Indian currency loans into such foreign currency loans. 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.

35.5 Other rights and obligations of the Authority

- 35.5.1 Subject to Clause 35.5.2 below, upon Termination for any reason whatsoever and if the Site and Licensed Premises are provided by the Authority to the Concessionaire in accordance with the terms of this Agreement, then the Authority shall:

- (a) take possession and control of the Site forthwith;
- (b) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any infrastructure built therein as part of the Project; and
- (c) require the Concessionaire to comply with the Divestment Requirements set forth in Article 36.

- 35.5.2 Upon Termination on account of an Authority Default and if the Authority decides to purchase the Project Assets in accordance with Clause 35.3.1, the Authority shall:

- (a) take possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction Equipment and all other Project Facilities 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 Service Continuity Requirements and Divestment Requirements set forth in Article 36; 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, it is hereby agreed, and the Concessionaire hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

- 35.5.3 Upon Termination for any reason whatsoever and if the Site is procured by the Concessionaire then the ownership and possession of the Site and Project Assets would remain with the Concessionaire.

35.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 35.3.5, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

35.7 Extension of Concession Period

Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire may, at any time no earlier than 5 (five) years but no later than 3 (three) years prior to the completion of the Concession Period of 20 (twenty) years, by a notice issued in accordance with the Proviso to Clause 3.1.1, require an extension of the Concession Period as specified therein. Upon the expiry of the extended Concession Period hereunder, the transfer provisions for the Site and Project Facility as set out in Clause 35.5 shall apply, and no Termination Payment shall be due and payable to the Concessionaire for and in respect of such transfer. The Parties further agree that in the event of an extension hereunder, the provisions of this Agreement shall apply *mutatis mutandis* to the extended Concession Period.

ARTICLE 36
SERVICE CONTINUITY AND DIVESTMENT OF RIGHTS AND INTEREST

36.1 Service Continuity

Notwithstanding Article 35, upon Termination for Authority Default and the Authority deciding to purchase the Project Assets in accordance with Clause 35.3.2, the Concessionaire shall comply with and conform to the following service continuity requirements (“**Service Continuity Requirements**”):

- (a) submit to the Authority, a plan outlining the handover procedures, training of authority staff and plan for management of human resources (the “**Service Continuity Plan**”); and
- (b) continue operation of the Project and providing Testing Services for a period of 30 (thirty) days from the date of Termination of this Agreement (the “**Service Continuity**”), and during this period payments shall be made to the Concessionaire, in accordance with the provisions of Article 27.

36.2 Divestment Requirements

36.2.1 Upon Termination for any reason whatsoever and if the Site and Licensed Premises are provided by the Authority to the Concessionaire in accordance with the terms of this Agreement, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) deliver forthwith the actual or constructive possession of the Site along with the infrastructure built thereon for the Project free and clear of all Encumbrances;
- (b) remove from the Site all Project Assets, except the infrastructure built thereon;
- (c) the staff recruited by the Concessionaire shall not be transferred to the Authority upon termination of this Agreement;

36.2.2 Upon Termination on account of an Authority Default and if the Authority decides to purchase the Project Assets in accordance with Clause 35.3.1, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project Facility free and clear of all Encumbrances;
- (c) cure all Project Assets, including all defects and deficiencies so that the Project is compliant with the Safety Requirements, Service 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 relevant records and reports pertaining to the Project and its design, monitoring, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the intellectual property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project Facility 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 to its nominee.

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.

36.3 Inspection and cure

If the Authority decides to purchase the Project Assets in accordance with Clause 35.3.1, not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before 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 Safety Requirements, Service Requirements and 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 Safety Requirements, Service Requirements and Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 37 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 36.

Not earlier than 90 (ninety) days before Termination but not later than 15 (fifteen) days before 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, the condition of the Site. If there are any defects in the Site then the same shall be cured by the

Concessionaire at its cost and the provisions of Article 37 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 36.

36.4 Cooperation and assistance on transfer of Project

36.4.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the owners of Transport Vehicles which need to avail of Testing Services, other members of the public or the lawful occupiers of any part of the Project Facility.

36.4.2 The Parties shall provide to each other, 270 (two hundred and seventy) days prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for handing over the Site and/or the 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 180 (one hundred and eighty) days after the Transfer Date.

36.5 Vesting Certificate

The divestment of all rights, title and interest in the Project and the Site 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-S** (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 Site and/or the Project, as the case may be, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

36.6 Divestment costs etc.

36.6.1 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.

36.6.2 In the event of any dispute relating to matters covered by and under this Article 36, the Dispute Resolution Process shall apply.

ARTICLE 37
DEFECTS LIABILITY AFTER TERMINATION

37.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (one hundred and twenty) days (the “**Defect Liability Period**”) after Termination, 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 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 Safety Requirements, Service Requirements and Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the funds retained in Escrow Account under the provisions of Clause 37.2 or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 37 shall not apply if Termination occurs prior to COD.

37.2 Retention of Testing Charges

37.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.2.3, a sum equal to 5 (five) times the monthly Testing Charges payable immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 180 (one hundred and eighty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 37.1.

37.2.2 Without prejudice to the provisions of Clause 37.2.1, the Independent Expert shall carry out an inspection of the Project Facility 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 Facility is such that a sum larger than the amount stipulated in Clause 37.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 180 (one hundred and eighty) days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.

37.2.3 The Concessionaire may, for the performance of its obligations under this Article 37, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 37.2.1 or 37.2.2, 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 37. Upon furnishing of a Performance Guarantee under this Clause 37.2.3, the retention of funds in the Escrow Account in terms of Clause 37.2.1 or 37.2.2, as the case may be, shall be dispensed with.

Part VI

Other Provisions

**ARTICLE 38
ASSIGNMENT AND CHARGES**

38.1 Restrictions on assignment and charges

38.1.1 Subject to Clauses 38.2, 38.3 and 38.5, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

38.1.2 Subject to the provisions of Clause 38.2, 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.

38.2 Permitted assignment and charges

The restraints set forth in Clause 38.1 shall not apply to:

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

38.3 Substitution Agreement

38.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire in accordance with 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-T**.

38.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such

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

38.4 Assignment by the Authority

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

38.4.2 Any assignment under this Article 38 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.

38.5 Mortgage of Project Assets

38.5.1 Notwithstanding anything to the contrary contained in this Agreement, upon request made in this behalf by the Lenders' Representative, the Authority and the Concessionaire shall jointly execute a mortgage deed (the "**Mortgage Deed**") forthwith for the benefit of the Senior Lenders to provide *inter alia* for the following:

- (a) As security for Debt Due, all Project Assets, excluding Transport Vehicles (the "**Mortgaged Assets**") shall stand mortgaged in favour of Senior Lenders subject to the terms specified in the Mortgage Deed.
- (b) Senior Lenders shall not exercise or enforce any rights or title over the Mortgaged Assets at any time prior to the expiry of 180 (one hundred and eighty) days from the Transfer Date.
- (c) The charge created over the Mortgaged Assets shall stand released and extinguished upon the Authority making the Termination Payment in accordance with the provisions of the Agreement.
- (d) In the event that Termination Payment is not made before expiry of 180 (one hundred and eighty) days from the Transfer Date, the Senior Lenders shall have the right and entitlement to use or dispose of the Mortgaged Assets for recovery of Termination Payment, and any recovery in excess of the Termination Payment shall be due and payable by the Senior Lenders to the Authority.
- (e) Upon taking over of the Mortgaged Assets by the Senior Lenders in accordance with the Mortgage Deed, the rights and title of the Senior Lenders and Concessionaire for and in respect of recovery of Termination Payment shall be deemed to be extinguished and the Termination Payment shall be deemed to have been made in full by the Authority under and in accordance with the provisions of the Agreement.
- (f) The Mortgaged Assets shall expressly exclude all Transport Vehicles.
- (g) The Mortgage Deed shall expire and cease to have any force or effect upon the earlier of (i) repayment of Debt Due by the Concessionaire and (ii) the 20th (twentieth) anniversary of COD.

- 38.5.2 Pursuant to the provisions of Clause 38.5.1, the Lender's Representative shall prepare a draft Mortgage Deed substantially in conformity with this Clause 38.5 and furnish copies to the Authority and the Concessionaire for their review and comments. The Lender's Representative shall consider such comments and send a revised draft to the Authority and the Concessionaire for negotiations in good faith. In the event such negotiations do not conclude in the form of an agreed Mortgage Deed to be executed within 60 (sixty) days of the date of furnishing the first draft hereunder, the Dispute Resolution Procedure shall apply.

ARTICLE 39 CHANGE IN LAW

39.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 10 lakh (Rupees ten lakh)²⁷ and 0.5% (zero point five per cent) of the Testing Charges in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 39.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

39.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 10 lakh (Rupees ten lakh) and 0.5% (zero point five per cent) of the Testing Charges in any Accounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement.

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 39.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

²⁷ This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding an amount of Rs. 10 lakh for every Rs. 50 crore of Total Project Cost. A similar modification should also be made in Clause 39.2.

39.3 Protection of NPV

Pursuant to the provisions of Clauses 39.1 and 39.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the “NPV”) of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred. For the avoidance of doubt, the Parties expressly agree that for determination of NPV, the discount rate to be used shall be equal to the weighted average rate of interest at which the Concessionaire has raised the Debt Due under its Financing Agreements.

39.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 39 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

ARTICLE 40
LIABILITY AND INDEMNITY

40.1 General indemnity

40.1.1 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 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 any related agreement or on account of any defect or deficiency in the provision of Testing Services by the Concessionaire with respect to any Transport Vehicle, or from an negligence of the Concessionaire under contract, 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.

40.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and third party claims 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 Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of Concessionaire’s 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.

40.2 Indemnity by the Concessionaire

40.2.1 Without limiting the generality of Clause 40.1, 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 payable by the Concessionaire or any of its contractors or sub-contractors.

40.2.2 Without limiting the generality of the provisions of this Article 40, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims,

suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising 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.

40.3 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 40 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

40.4 Defence of claims

40.4.1 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 40, 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.

40.4.2 If the Indemnifying Party has exercised its rights under Clause 40.3, 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).

40.4.3 If the Indemnifying Party exercises its rights under Clause 40.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
 - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
 - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 40.4.3 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.

40.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 40, 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.

40.6 Survival on Termination

The provisions of this Article 40 shall survive Termination.

**ARTICLE 41
RIGHTS AND TITLE OVER THE SITE**

41.1 Licensee rights

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

41.2 Access rights of the Authority and others

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

41.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility.

41.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Licensed Premises; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority. For the avoidance of doubt, the Parties agree that stamp duties, if any, due and payable on the grant of licence comprising this Agreement shall be paid by the Authority. Provided, however, that the Authority may require the Concessionaire to pay such stamp duties, which shall be reimbursed by the Authority to the Concessionaire within 15 (fifteen) days of receiving the demand therefor.

41.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 42 DISPUTE RESOLUTION

42.1 Dispute resolution

42.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”) shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 42.2.

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

42.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Expert to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Expert or without the intervention of the Independent Expert, either Party may require such Dispute to be referred to the Chairman of the Authority and the chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 42.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 42.3.

42.3 Arbitration

42.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Clause 42.2, shall be finally decided by reference to arbitration by an arbitral tribunal constituted in accordance with Clause 42.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The venue of such arbitration shall be the capital of the State and the language of arbitration proceedings shall be English.

42.3.2 There shall be an arbitral tribunal comprising of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

42.3.3 The arbitral tribunal shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 42 shall be final and binding on the Parties as from the

date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

42.4 Adjudication by a tribunal

In the event of constitution of a statutory tribunal with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 42.3, be adjudicated upon by such tribunal in accordance with Applicable Laws and all references to Dispute Resolution Procedure shall be construed accordingly.

ARTICLE 43 DISCLOSURE

43.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, the Maintenance Programme, the Safety Requirements, Service Requirements and Maintenance Requirements and such other document as may be specified by the Authority from time to time (hereinafter collectively referred to as the “**Specified Documents**”), free of charge, during normal business hours on all working days at the Concessionaire’s registered office and Project Facility. The Concessionaire shall prominently display at the Project Facility, 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.

43.2 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 Facility, free of charge, during normal business hours on all working days, at the Concessionaire’s registered office and Project Facility. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

43.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clause 43.1 and 43.2, but subject to Applicable Laws, 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 Clause 43.1 and 43.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

**ARTICLE 44
REDRESSAL OF GRIEVANCES**

44.1 Complaint Register

- 44.1.1 The Concessionaire shall maintain a public relations office at the Project Facility where it shall keep a register (the “**Complaint Register**”) open to officials of the Authority, public and owners of Transport Vehicles visiting the I&C Facility and access at all times for recording of complaints by any person (the “**Complainant**”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project Facility so as to bring it to the attention of those visiting the I&C Facility.
- 44.1.2 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.
- 44.1.3 Without prejudice to the provisions of Clauses 44.1.1 and 44.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

44.2 Redressal of complaints

- 44.2.1 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.
- 44.2.2 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 each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal in accordance with Applicable Law, and advise the Complainant to pursue the complaint at his own risk and cost.

**ARTICLE 45
MISCELLANEOUS**

45.1 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 exclusive jurisdiction over matters arising out of or relating to this Agreement.

45.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

45.3 Depreciation

For the purposes of depreciation under the 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 the Applicable Laws.

45.4 Delayed payments

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

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

45.5 Waiver

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

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

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

45.6 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.

45.7 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.

45.8 Survival

45.8.1 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.

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

45.9 Entire Agreement

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

45.10 Severability

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

45.11 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.

45.12 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.

45.13 Successors and Assigns

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

45.14 Notices

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

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

- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand at the address given below and be addressed to the person named below with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in the same city as the Authority, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier.

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

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

45.15 Language

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

45.16 Counterparts

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

ARTICLE 46 DEFINITIONS

46.1 Definitions

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

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

“**Additional Auditors**” shall have the meaning as set forth in Clause 31.2.3;

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “**Base Adjusted Equity**”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date; and
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.22% (zero point two two per cent²⁸ thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

and the aforesaid shall apply, *mutatis mutandis*, to the Equity funded in Indian Rupees and expended for augmentation, if any. 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 Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made.

“**Affected Party**” shall have the meaning set forth in Clause 32.1;

²⁸ This number shall be substituted in each case by the figure arrived at upon dividing 80 by the number of months comprising the Concession Period. For example, the figure for a 30 year Concession Period shall be $80/360 = 0.222$ rounded off to two decimal points i.e. 0.22.

“**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;

“**Annual Maintenance Plan**” shall have the meaning as set forth in Clause 5.1.6 (a);

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

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

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

“**Appointed Date**” shall have the meaning set forth in Clause 4.3;

“**ARAI**” means the Automotive Research Association of India;

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

“**Article of Association**” shall have the meaning ascribed to it in Section 2 (5) of Companies Act, 2013;

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

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

“**Authority Default**” shall have the meaning set forth in Clause 35.2.1;

“**Authority Indemnified Persons**” shall have the meaning as set forth in Clause 40.1.1;

“**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;

“**Average Monthly Testing Charges**” for the Accounting Year in which COD occurs means [●] number of Transport Vehicles multiplied by the Base Testing Rate and for every subsequent Accounting Year it shall be 102% of Average Monthly Testing Charges for the previous Accounting Year;

“**Award**” shall have the meaning as set forth in Clause 42.3.3;

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

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

“**Base Testing Rate**” shall have the meaning as set forth in Clause 27.1.2;

“**Bid**” means the documents in their entirety comprised in the bid submitted by the [Concessionaire/{selected bidder/ Consortium}] in response to the RFQ and RFP in accordance with the provisions thereof;

“**Bid Security**” means the security provided by the [Concessionaire/ {selected bidder/ Consortium}] to the Authority along with the Bid in a sum of [Rs. [●]²⁹(Rupees [●]), in accordance with the RFQ and RFP, and which is to remain in force until substituted by the Contract Performance Security;

“**Board of Directors**” shall have the meaning ascribed to it in Section 2 (10) of Companies Act, 2013;

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

“**Capacity**” shall have the meaning set forth in Clause 5.1.3;

“**Central Pollution Control Board**” means the Central Pollution Control Board constituted under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

“**Certificate of Compliance**” shall have the meaning as set forth in Clause 4.1.6;

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

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

²⁹ To be calculated @1% (one per cent) of the amount specified in the definition of Total Project Cost.

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

“Change in Ownership” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the [promoter/Consortium Members] together with their Associates in the total Equity to decline below (i) 51 % (fifty one per cent) thereof during Construction Period, (ii) 33 % (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26 % (twenty six per cent) thereof, or such lower proportion as may be permitted by the Authority during the remaining Concession Period; provided that any variation (as compared to the representations made by the Concessionaire during the bidding process) in the proportion of the equity holding of [any promoter/Consortium Member] to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership; provided further that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15 % (fifteen per cent) of the total Equity by any person and/ or his Associate at any time during the Concession Period shall constitute a Change in Ownership. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the Equity or voting rights of the shares of the Concessionaire;

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

“Change of Scope Notice” shall have the meaning as set forth in Clause 16.2.1;

“Change of Scope Order” shall have the meaning as set forth in Clause 16.2.3;

“CIRT” shall mean the Central Institute of Road Transport;

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

“Complainant” shall have the meaning as set forth in Clause 44.1.1;

“Complaint Register” shall have the meaning as set forth in Clause 44.1.1;

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

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

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

“Concessionaire Default” shall have the meaning set forth in Clause 35.1.1;

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

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

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

“**Consortium**” shall have the meaning set forth in Recital (C);

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

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

“**Construction Quality Plan**” shall have the meaning set forth in **Schedule-D**;

“**Construction Works**” means all works and things necessary to complete the construction and/or upgradation of the Project and Project Facilities and subsequent construction and augmentation in accordance with this Agreement;

“**Contractor**” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract or any other agreement or contract for construction, 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;

“**Covenant**” shall have the meaning set forth in Clause 5.2.4;

“**CPI (IW)**” means the Consumer Price Index for Industrial Workers as published by the Ministry of Statistics and Programme Implementation, GOI and shall include any index which substitutes the CPI (IW), and any reference to CPI (IW) shall, unless the context otherwise requires, be construed as a reference to the CPI (IW) published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Base Testing Rate in accordance with the provisions of Clause 27.1.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year;

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

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

provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Expert hereunder,

the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Expert to accord their approval;

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

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

“**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, on or after COD, shall in no case exceed 85% (eighty five per cent) 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 under the Financing Agreements;

“**Deemed Performance Security**” shall have the meaning as set forth in Clause 9.4;

“**Default Escrow Account**” shall have the meaning as set forth in Clause 28.1.1;

“**Default Escrow Agreement**” shall have the meaning as set forth in Clause 28.1.1;

“**Default Escrow Bank**” shall have the meaning as set forth in Clause 28.1.1;

“**Defect Liability Period**” shall have the meaning as set forth in Clause 37.1;

“**Deficient Capacity**” shall have the meaning as set forth in Clause 27.3;

“**Deficient Transport Vehicles**” shall have the meaning as set forth in Clause 27.2;

“**Detailed Project Report**” shall mean the base document for planning the Project and implementing the Project;

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

“**Director**” shall have the meaning ascribed to the term under the Companies Act, 2013;

“**Dispute**” shall have the meaning set forth in Clause 42.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes set forth in Article 42;

“**Disputed Amounts**” shall have the meaning set forth in Clause 27.10.3;

“**District**” shall mean [●]³⁰;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 36.2;

“**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-H**, and shall include “as built” drawings of the Project;

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

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

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

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

³⁰ To insert the identified District in relation to which the concession has been granted.

“**Equipment**” means all the equipments on the Site required to operate the Project Facility including the Testing Equipments in the I&C Facility, as set forth in **Schedule-C**;

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

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

“**Escrow Agreement**” shall have the meaning set forth in Clause 29.1.2;

“**Escrow Bank**” shall have the meaning set forth in Clause 29.1.1;

“**Escrow Default**” shall have the meaning set forth in Clause 6.1 of **Schedule-Q**;

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

“**Financial Default**” shall have the meaning set forth in **Schedule-T**;

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

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

“**Financing Agreements**” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.3;

“**Force Majeure**” or “**Force Majeure Event**” shall have the meaning ascribed to it in Clause 32.1;

“**Force Majeure Costs**” shall have the meaning as set forth in Clause 32.7.2;

“**GOI**” / “**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 developer and operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

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

“**Heavy Motor Vehicle**” shall mean Transport Vehicles, the weight of which exceeds 12,000 kilograms;

“**ICAT**” means the International Centre for Automotive Technology;

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Clause 40.3;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Clause 40.3;

“**Independent Expert**” means an Independent Engineer in accordance with the terms of this Agreement;

“**Indirect Political Event**” shall have the meaning set forth in Clause 32.3;

“**Inspection and Certification Facility**” or “**I&C Facility**” means the automated inspection and certification center for Transport Vehicles at [●] in district [●] in the State of [●] comprising of 2 (two) Inspection Lanes for Light Motor Vehicles and 2 (two) Inspection Lanes for Heavy Motor Vehicles, with a total capacity of conducting Vehicle Testing on [●] Light Motor Vehicles and [●] Heavy Motor Vehicles at any given point in time during a day;

“**Inspection Lane**” means the lane where the required Testing Equipments are laid out for Vehicle Testing;

“**Inspection Report**” shall have the meaning as set forth in Clause 13.2;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 30, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

“**Intellectual Property Rights**” means any patent, utility model, registered design, trademark, copyright or other intellectual property rights (including any and all licenses) regardless of where or whether it is registered;

“**Key Performance Indicators**” shall have the meaning set forth in Clause 24.1;

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

“**Letter of Credit**” shall have the meaning as set forth in Clause 28.2.1;

“**Licensed Premises**” shall have the meaning ascribed to it in Clause 10.2.2;

“**License Fee**” shall have the meaning ascribed to it in Clause 10.2.3;

“**Light Motor Vehicle**” shall mean Transport Vehicles, the weight of which does not exceed 7,500 kilogram;

“**LOA**” or “**Letter of Acceptance**” means the letter of acceptance referred to in Recital (E);

“**Maintenance Manual**” shall have the meaning ascribed to it in Clause 17.3.1;

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

“**Maintenance Requirements**” shall have the meaning set forth in Clause 17.2.1;

“**Major Overhaul**” means the complete repair, restoration and renovation of an I&C Facility after removal of Transport Vehicles therefrom;

“**Manpower Training**” shall have the meaning ascribed to it in Clause 5.5;

“**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;

“**Maximum Monthly Payment**” shall have the meaning ascribed to it in Clause 28.1.1;

“**Memorandum of Association**” shall have the meaning ascribed to it in Section 2 (56) of Companies Act, 2013;

“**Modified Specifications**” shall have the meaning ascribed to it in Clause 21.1;

“**Monthly Invoice**” shall have the meaning ascribed to it in Clause 27.10.1;

“**Mortgage Deed**” shall have the meaning ascribed to it in Clause 38.5.1;

“**Mortgaged Assets**” shall have the meaning ascribed to it in Clause 38.5.1 (a);

“**MoU**” shall have the meaning ascribed to it in Clause 32.12.6;

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

“**Non-Political Event**” shall have the meaning set forth in Clause 32.2;

“**NPV**” shall have the meaning set forth in Clause 39.3;

“**O&M**” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Testing Charges 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, redevelopment, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

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

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

“**Panel of Chartered Accountants**” shall have the meaning set forth in Clause 31.2.1 and as set forth in **Schedule-R**;

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

“**Payment Due Date**” shall have the meaning ascribed to it in Clause 27.10.3;

“**Penalty Points**” shall mean such points as may be issued by the Authority for each breach of the obligations of the Concessionaire prescribed under Clause 5.12.4 in accordance with the requirements of [●];

“**Performance Guarantee**” shall have the meaning set forth in Clause 37.2.3;

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

“**Political Event**” shall have the meaning set forth in Clause 32.4;

“**Pollution Control Board Norms**” shall mean such norms as issued by the Central Pollution Control Board or State Pollution Control Board;

“**PPP**” shall mean public private partnership;

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

“**Price Index**” shall comprise:

- (a) 70% (seventy per cent) of WPI; and
- (b) 30% (thirty per cent) of CPI (IW),

which constituents may be substituted by such alternative index or indices as the Parties may by mutual consent determine;

“**Project**” shall mean the construction, operation and maintenance of the Project Facility including the I&C Facility 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 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 and the Substitution Agreement;

“**Project Assets**” means all physical and other assets relating to and forming part of the Project including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and Equipment; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project;

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

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

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

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

“**Protected Documents**” shall have the meaning ascribed to it in the Explanation to Clause 43.3;

“**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 Date**” shall mean the Equity funded in Indian Rupees and adjusted on the first day of the current month;

“**Reference Index Date**” means, in respect of the specified month, that last day of the preceding month with reference to which the Price Index or CPI (IW), as the case may be, is revised;

“**Regional Transport Authority**” shall mean the transport authority constituted by the State Government of [●] pursuant to Section 68 of the Motor Vehicles Act, 1988 (59 of 1988);

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

“**Replacement**” shall have the meaning ascribed to it in Clause 23.1.2;

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

“**Request for Qualification**” or “**RFQ**” shall have the meaning as set forth in Recital (C);

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

“**Rules**” shall have the meaning as set forth in Clause 42.3.1;

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

“**Scheduled Completion Date**” shall have the meaning set forth in Clause 12.3.1;

“**Scheme**” shall mean the guidelines for setting up I&C centers (2017-18 to 2019-20) issued by the Ministry of Road Transport & Highways, Government of India as may be amended or modified from time to time;

“**Scope of the Project**” shall have the meaning set forth in Article 2;

“**Secured Obligations**” means:

- (a) the amounts due to the Default Escrow Bank from the Authority in relation to the Letter of Credit;
- (b) obligations of the Authority for payment of Testing Charges under and in accordance with this Agreement; and
- (c) obligation of the Authority to make Termination Payment under and in accordance with this Agreement upon termination thereof;

“**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;

“**Service Continuity**” shall have the meaning as set forth in Clause 36.1 (b);

“**Service Continuity Plan**” shall have the meaning ascribed to it in Clause 36.1 (a);

“**Service Continuity Requirements**” shall have the meaning ascribed to it in Clause 36.1;

“**Service Quality Manual**” shall have the meaning as set forth in Clause 17.1.1 (a);

“**Service Requirements**” shall have the meaning as set forth in Clause 17.2.2;

“**Site**” means the [parcel of land owned or leased by the Concessionaire for the Project and as set forth in **Schedule-A**];

“**Software**” means the software for maintenance of Transport Vehicle entry records, and the records for Vehicle Testing;

“**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 design and monitoring for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Specified Documents**” shall have the meaning as set forth in Clause 43.1;

“**State**” means the State of [●] and “**State Government**” means the government of that State represented by its Governor;

“**State Pollution Control Board**” means a State Pollution Control Board constituted under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or a State Pollution Control Board constituted under Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 2013 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 31.2.1;

“**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 for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

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

“**Substitution Agreement**” shall have the meaning set forth in Clause 38.3.1;

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

“**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 early 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 under and in accordance with the terms of this Agreement.

“**Testing Charges**” shall have the meaning set forth in Clause 27.1.1;

“**Testing Services**” shall include services as outlined in **Schedule-B**;

“**Testing Equipments**” means the equipments set forth in **Schedule- C** to test the Light Motor Vehicles and Heavy Motor Vehicles.

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

“**Testing Rate**” shall have the meaning ascribed to it in Clause 27.1.3.

“**Total Project Cost**” means the lowest of:

- (a) capital cost of the Project, as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Project; and

(c) a sum of [Rs. [●] (Rupees [●])³¹;

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;

“**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;

“**Transport Vehicles**” shall mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle, each as defined under the Motor Vehicles Act, 1988, or Light Motor Vehicle or Heavy Motor Vehicle, or any other vehicle for which automated testing is made mandatory under Applicable Law as notified by the Government from time to time;

“**Unforeseen Event**” shall have the meaning set forth in Clause 32.12.1;

“**Unscheduled Maintenance**” shall have the meaning set forth in Clause 17.14;

“**Vehicle Tests**” or “**Vehicle Testing**” means the inspection, testing and certification of a Vehicle in the I&C Facility, and shall include tests set forth in **Schedule-I**;

“**Vesting Certificate**” shall have the meaning set forth in Clause 36.5; and

“**WPI**” means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month, save and except that for the purposes of annual revision of the Base Testing Rate in accordance with the provisions of Clause 27.1.3, the revision due on April 1 of any year shall be computed with reference to WPI as on January 31 of that year.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as of the day, month and year first above written.

SIGNED, SEALED AND DELIVERED
For and on behalf of THE AUTHORITY by:

(Signature)
(Name)
(Designation)

SIGNED, SEALED AND DELIVERED
For and on behalf of CONCESSIONAIRE by:

(Signature)
(Name)
(Designation)

In the presence of:

³¹ This amount may be indicated on the basis of Project-specific cost estimates, including financing charges. In determining this amount, the estimated cost of construction shall be increased by 25% thereof to account for contingencies, risk premia and financing costs. These costs should be reviewed and firmed up during pre-bid consultations.

1. [•]

2. [•]

Schedules

**SCHEDULE-A
SITE OF THE PROJECT**

1. The Site

- (a) The Site of the Project Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A; and
- (b) Additional land required for ancillary buildings, extension/ addition of Project Capacity or for construction of works specified in Change of Scope Order issued under Clause 16.2.3 of this Agreement, which shall be acquired in accordance with the provisions of this Agreement. [Upon acquisition, such land shall form part of the Site and vest in the Authority]³².

- 2.** An inventory of the Licensed Premises including the land, 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 referred to in Clause 10.3.1 of the Agreement.

³² To be deleted in case the obligation to procure land is on the Concessionaire.

Annex - I (Schedule-A)

SITE FOR THE PROJECT FACILITY

[Note: Through suitable drawings and description in words, the land comprising the Site shall be specified briefly but precisely in this Annex-I. In the event there are any buildings or structures on the Site, the same shall be marked in the drawings and briefly described in words.]

**SCHEDULE-B
TESTING SERVICES**

The Concessionaire shall provide the following Testing Services in accordance with the provisions of this Agreement:

- (a) providing parking facility for at least [•] Transport Vehicles at any given point in time with sufficient turning and movement space;
- (b) issuance of token for Vehicle Testing;
- (c) providing 2 (two) Inspection Lanes for Vehicle Testing of Light Motor Vehicles;
- (d) providing 2 (two) Inspection Lanes for Vehicle Testing of Heavy Motor Vehicles;
- (e) conduct all the testing of Transport Vehicles including visual inspection and automated tests as required by Applicable Law and following the procedures and standards prescribed in Schedule-D;
- (f) sending results of fitness testing in the form of Vehicle Testing Report (in the form and manner prescribed at **Schedule-U**) to Regional Transport Authority.

**SCHEDULE-C
PROJECT FACILITIES**

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

1. I&C Facility including the following:

(a) Equipments

- i. all the Equipments on the Site required to operate the Project Facility
- ii. Transport Vehicle Testing Equipments

Transport Vehicle Testing Equipment for Light Motor Vehicles Inspection Lane

S.No.	Light Motor Vehicles Inspection Lane	Quantity
1	Roller Brake Tester	[•]
2	Suspension Testing	[•]
3	Sideslip Tester	[•]
4	Joint Play Tester	[•]
5	Headlight Tester	[•]
6	Smoke Opacimeter	[•]
7	Exhaust Gas Analyzer	[•]
8	Speedometer Tester	[•]
9	Sound level Meter	[•]

Transport Vehicle Testing Equipment for Heavy Motor Vehicles Inspection lane

S.No.	Heavy Motor Vehicles Inspection Lane	Quantity
1	Roller Brake Tester	[•]
2	Suspension Testing	[•]
3	Sideslip Tester	[•]
4	Joint Play Tester	[•]
5	Headlight Tester	[•]

6	Smoke Opacimeter	[•]
7	Exhaust Gas Analyzer	[•]
8	Speedometer Tester	[•]
9	Sound level Meter	[•]

(b) **Software required for conducting Testing Services and providing the fitness reports post conducting the Vehicles Testing.**

(c) **Inspection Lanes**

2. **Parking facilities for parking of the Transport Vehicles which come for Vehicle Testing**

3. **Administrative Office**

**SCHEDULE-D
SPECIFICATIONS AND STANDARDS**

The Concessionaire shall comply with the Specifications and Standards set forth herein for construction, operation and maintenance of the Project.

1. Construction standard, including Construction Quality Plan

(a) Building Code:

National Building Code of India

(b) Design Specifications:

[•]

(c) Construction Specifications:

[•]

2. Calibration of Equipment

The Concessionaire shall undertake calibration of Equipment as per the standards of the original equipment manufacturer of such Equipment.

3. Key Performance Indicators

Indicator	Inspection Lane for Light Motor Vehicles	Inspection Lane for Heavy Motor Vehicles
Annual Vehicle Testing Capacity	[•]	[•]
Number of Transport Vehicles to be subject to Vehicle Testing per hour/ day	[•]	[•]
Guaranteed testing	[•]	[•]
Number of working hours/ day	[•]	[•]
Number of working days/ year	[•]	[•]
Indicative Vehicle Testing cycle time per Transport Vehicle (in minutes)	[•]	[•]

4. Staffing

Level	No.	Job profile	Qualification
Operators	[•]	[•]	[•]
Supervisor	[•]	[•]	[•]
Data entry operator	[•]	[•]	[•]
Manager	[•]	[•]	[•]
Stores, purchase and administration	[•]	[•]	[•]
Maintenance	[•]	[•]	[•]
Security	[•]	[•]	[•]

5. **Vehicle Testing**

Vehicle Testing shall be undertaken in conformity with Annex-I of this Schedule-D.

6. **General standards**

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

- (a) [Bureau of Indian Standards (BIS);
- (b) Relevant 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 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.

In case of any inconsistency or conflict between the provisions of this Agreement and the applicable BIS Standards or Codes, the provisions of this Agreement shall apply.

Annex - I (Schedule-D)
VEHICLE TESTING

The Concessionaire shall undertake the following tests in furtherance of its obligation to conduct Vehicle Testing:

S.No	Test
1	Free Acceleration Test/ Idle Test
2	Speedometer Test
3	Side Slip Test
4	Suspension Test
5	Brake Test
6	Headlight Test
7	Horn Test
8	Exhaust Noise Test
9	Joint Play Test
10	Steering Play Test
11	Visual Inspection as per Rule 62, Central Motor Vehicle Rules, 1989
12	Such other tests as may be required under the Applicable Law

**SCHEDULE-E
APPLICABLE PERMITS**

PART I

1. Applicable Permits prior to Appointed Date

1.1 The Concessionaire shall, as required under Applicable Laws, obtain the Applicable Permits in Clause 1.2 on or before the Appointed Date, save and except to the extent of a waiver granted by the Authority in Clause 4.1.3 of the Agreement.

1.2 An indicative list of Applicable laws is provided hereunder:

- (a) [Motor Vehicles Act, 1988;
- (b) Central Motor Vehicles Rules, 1989;
- (c) Air (Prevention and Control of Pollution) Act, 1981;
- (d) The Environment (Protection) Act, 1986 (except the original environmental clearance for the Project to be obtained by the Authority);
- (e) Water (Prevention and Control of Pollution) Act, 1974.]

PART II

2. Applicable Permits prior to COD

The following Applicable Permits shall be obtained prior to COD:

- (a) Permission of the State Government for cutting of trees;
- (b) Any other permits or clearances required under Applicable Laws.

**SCHEDULE-F
PERFORMANCE SECURITY**

.....
.....
.....

WHEREAS:

- (A) [•] (the “**Concessionaire**”) and the Governor of State Government of [•] (“**Authority**”) have entered into a Concession Agreement dated [•] (the “**Agreement**”) whereby the Authority has resolved to procure an automated inspection and certification center for automated testing of Transport Vehicles 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 [•])] (the “**Guarantee Amount**”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).
- (C) We, [•] through our Branch at [•] (the “**Bank**”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees and undertakes to pay to the Authority upon occurrence of any failure or default in due and faithful performance of all or any of the Concessionaire’s obligations, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of an officer not below the rank of a [superintending engineer or equivalent], 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, 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 shall cease to be in force and effect when the Commercial Operation Date under the Agreement has occurred. Upon request made by the Concessionaire for release of the Performance Security alongwith the particulars required hereunder including that the Commercial Operation Date under the Agreement has occurred, duly certified by a statutory auditor of the Concessionaire, 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 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
PROJECT COMPLETION SCHEDULE

1. Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this **Schedule-G** for each of the Project Milestones (the “**Project Completion Schedule**”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof.

2. Project Milestone-I

2.1 Project Milestone-I shall occur on the date falling on the [90th (ninetieth)] day from the Appointed Date (the “**Project Milestone-I**”).

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced development of the Project and expended not less than [10% (ten per cent)] of the Total Project Cost set forth in the Financial Package.

3. Project Milestone-II

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

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

4. Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [270th (two hundred and seventieth)] day from the Appointed Date (the “**Project Milestone-III**”).

4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced [installation of Equipments at the Project Facilities and expended not less than [60% (sixty per cent)] of the Total Project Cost set forth in the Financial Package.

5. Project Milestone-IV

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

- 5.2 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced trial running of the I&C Facility and expended not less than [90% (ninety per cent)] of the Total Project Cost set forth in the Financial Package.

6. Scheduled Completion Date

- 6.1 The Scheduled Completion Date shall be [545th (five hundred and forty fifth)] day from the Appointed Date.
- 6.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Construction Works in accordance with this Agreement.

7. Extension of period

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

**SCHEDULE-H
DRAWINGS**

[Note: This list is indicative and would need to be discussed further with the technical advisors and fleshed out.]

In compliance of the obligations set forth in Clause 12.2 of this Agreement, the Concessionaire shall furnish to the Independent Expert, free of cost, all Drawings listed below:

- (a) [Layout of the Project Facility, including the layout of I&C Facility and Testing Lanes;
- (b) Layout of the parking facility;
- (c) Diagram for process of Vehicle Testing;
- (d) Electricity system.]

SCHEDULE-I TESTS

1. Schedule for Tests

1.1 The Concessionaire shall, no later than 30 (thirty) 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 7 (seven) 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-I**.

2. Tests

2.1 In pursuance of the provisions of Clause 14.1.2 of this Agreement, the Independent Expert shall conduct, or cause to be conducted, the Tests specified in this Paragraph 2.

2.2 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.

2.3 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. In the event any Transport Vehicles are required for conducting the trial run, the minimum number of Transport Vehicles necessary for this purpose shall be provided by the Authority. Any damage caused to such Vehicles during the course of such trial run shall be borne by the Concessionaire and reimbursed to the Authority.

2.4 Tests for equipment

The Independent Expert shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of all systems and equipment comprising the Project Facility and described in **Schedule-C**.

2.5 Tests for I&C Facilities:

The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of the I&C Facilities with the Specifications and Standards, Applicable Laws,

Applicable Permits, Good Industry Practice and the calibration certificate issued by the manufacturers.

2.6 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.

2.7 Safety review:

The Independent Expert shall carry out a safety audit of the Project Facility to determine its compliance with the provisions of **Schedule-L** and this Agreement.

2.8 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-I** 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

Upon successful completion of Tests, the Independent Expert shall issue the Completion Certificate in accordance with the provisions of Article 14.

6. Tests during construction

Without prejudice to the provisions of this **Schedule-I**, tests during construction shall be conducted in accordance with the provisions of Clause 13.3.1.

**SCHEDULE-J
COMPLETION CERTIFICATE**

1. I, [Name of the Independent Expert, acting as Independent Expert, under and in accordance with the Concession Agreement dated [•] (the “**Agreement**”), for procuring the Project on design, build, finance, operate and transfer (“**DBFOT**”) basis, through [Name of Concessionaire], hereby certify that the Tests specified in Article 14 and **Schedule-I** of the Agreement have been successfully undertaken to determine compliance of the Project with the provisions of the Agreement, and I am satisfied that the Project can safely and reliably provide Testing Services to Transport Vehicles.

2. It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facility have been completed, and the Project is hereby declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

SIGNED, SEALED AND DELIVERED

For and on behalf of

INDEPENDENT EXPERT by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE-K
MAINTENANCE MANUAL, SERVICE REQUIREMENTS AND MAINTENANCE
REQUIREMENTS

[Note: The Maintenance Manual, Service Quality Manual and Maintenance Requirement and Service Requirement for the I&C Facility as provided by the Authority or other authorized agency to be specified in this Schedule-K.]

1. Service Requirements

[To be included.]

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-K**.

2.2. The Concessionaire shall repair or rectify any defect or deficiency set forth in Paragraph 2.3 and 2.4 of this **Schedule-K** within the time limit specified therein and any failure in this behalf shall constitute a breach of the Agreement. Upon occurrence of any breach hereunder, the Authority shall be entitled to recover Damages as set forth in Clause 17.5 of 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 specified in Annex – III of this **Schedule - K** within the time limit set forth therein.

2.4. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.

Other defects and deficiencies

2.5. In respect of any defect or deficiency not specified in Annex - III of this **Schedule-K**, the Concessionaire shall undertake repair or rectification in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

2.6. In respect of any defect or deficiency not specified in Annex - III of this **Schedule-K**, 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

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

Emergency repairs/restoration

- 2.8. Notwithstanding anything to the contrary contained in this **Schedule-K**, 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

- 2.9. 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

- 2.10. All defects and deficiencies specified in this **Schedule-K** 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 – K

- 2.11. The Concessionaire shall display a copy of this **Schedule-K** at the Project Facility along with the Complaint Register stipulated in Clause 44.1.

**Annex - I (Schedule-K)
MAINTENANCE MANUAL**

[To be attached]

**Annex - II (Schedule-K)
SERVICE QUALITY MANUAL**

[To be attached]

Annex - III (Schedule-K)
REPAIR/RECTIFICATION OF DEFECTS AND DEFICIENCIES

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-III of **Schedule-K** within the time limit set forth herein.

Nature of defect or deficiency	Time limit for repair/ rectification
Breakdown of or defect in Testing Lanes	[•]
Breakdown of or defect in Equipments	[•]
Breakdown of or defect in Testing Equipments	[•]
Breakdown of or defect in Software	[•]
Breakdown of, or defect in CCTV	[•]

SCHEDULE-L 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 -L**.

2. Obligations of the Concessionaire

The Concessionaire shall abide by the following:

- (a) Applicable Laws and Applicable Permits;
- (b) provisions of this Agreement;
- (c) relevant Standards/Guidelines contained in internationally accepted codes; and
- (d) Good Industry Practice.

3. Safety measures during Operation Period

- 3.1 The Concessionaire shall develop, implement and administer a safety programme for the Project Facility, staff, Vehicles and persons, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 3.2 The Concessionaire shall keep a copy of every FIR recorded by the Police 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.
- 3.3 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 3.1 of this **Schedule-L** for averting or minimising such accidents in future.
- 3.4 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.

4. **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-L**, shall be borne by the Concessionaire in accordance with the provisions of Clause 18.1.2.

Annex- I (Schedule-L)
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 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 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 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 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-M
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-M**.
- 1.3 The Concessionaire may, in its discretion, nominate a representative to participate in the process of selection to be undertaken by the Authority under this **Schedule-M**.

2. Terms of Reference

The Terms of Reference for the Independent Expert shall substantially conform with **Schedule-N**.

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 Construction Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 0.5% (zero point five per cent) of the Total Project Cost. Payments not exceeding such 0.5% (zero point five 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. Selection every three years

No later than 3 (three) years from the date of appointment of Independent Expert pursuant to the provisions of Paragraph 1 of this **Schedule-M**, and every 3 (three) years thereafter, the Authority shall engage another firm in accordance with the criteria set forth in this **Schedule-M**.

5. Appointment of government entity as Independent Expert

- 5.1 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-N
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**”) for procuring the Project 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, 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:

- (i) review of the Drawings and Documents as set forth in Paragraph 4;
- (ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 4;
- (iii) review, inspection and testing of Project Facility as set forth in Paragraph 4;
- (iv) conducting Tests on completion of construction and issuing Completion as set forth in Paragraph 4;
- (v) review, inspection and monitoring of O&M as set forth in Paragraph 5;
- (vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 6;
- (vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
- (viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

- (ix) assisting the Parties in resolution of Disputes as set forth in Paragraph 8; and
- (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 of receiving such Drawings or Documents.

4.3 The Independent Expert shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.4 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. In a separate section of the Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facility or in the equipment. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Expert shall send a copy of

its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

- 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 In the event that the Concessionaire fails to achieve any of the Project Milestones, the Independent Expert shall undertake a review of the progress of construction and identify potential delays, if any. If the Independent Expert shall determine that completion of the Project Facility is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which COD shall be achieved. Upon receipt of a report from the Concessionaire, the Independent Expert shall review the same and send its comments to the Authority and the Concessionaire forthwith.
- 4.14 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.

- 4.15 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.
- 4.16 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.
- 4.17 The Independent Expert shall carry out, or cause to be carried out, all the Tests specified in **Schedule-I** and issue a Completion 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-I**.
- 4.18 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.
- 4.19 The Independent Expert shall aid and advise the Concessionaire in preparing the Maintenance Manual.

5. Operation Period

- 5.1 In respect of the Drawings and Documents 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, Deficient Transport Vehicles and Deficient Capacity in accordance with the terms of the Concession Agreement.
- 5.5 The Independent Expert shall ensure periodic calibration of Testing 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 27.8 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.

- 5.7 The Independent Expert shall inspect the Project Facility, at least once every quarter, preferably after receipt of the last monthly status report in the relevant quarter from the Concessionaire, but before the 20th (twentieth) day after the close of each quarter in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Programme, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Expert shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Project Facility. The Independent Expert shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
- 5.8 The Independent Expert may inspect the Project Facility more than once in a quarter, if any lapses, defects or deficiencies require such inspections.
- 5.9 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.
- 5.10 In respect of any defect or deficiency referred to in Paragraph 2 of **Schedule-K**, 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.
- 5.11 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.
- 5.12 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 under Clause 17.13.
- 5.13 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 5.14 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 36.2 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 37.2, 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 37, 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

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. 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.

**SCHEDULE-O
DEFAULT ESCROW AGREEMENT**

THIS DEFAULT 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 the Default Escrow Bank), through its branch, and having its registered office at [•] (hereinafter referred to as the “**Default Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, substitutes and permitted assigns); and
3. **THE GOVERNOR OF [•]**, represented by [•], and having its offices at [•] (hereinafter referred to as the “**Authority**” 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 procuring an automated inspection and certification center for automated testing of Transport Vehicles 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 Annex-A to form part of this Agreement].
- (B) To secure the Authority’s payment obligations to the Concessionaire under the Concession Agreement, the Authority is required to establish a default escrow account on the terms and conditions stated therein (the “**Default Escrow Account**”).

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:

“**Authority Account**” shall have the meaning set forth in Clause 2.4;

“**Authority Escrow Default**” shall have the meaning set forth in Clause 8.1;

“**Agreement**” means this Default Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” shall have the meaning set forth in Recital A of this Agreement;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Authority, and shall commence from the date on which a notice is delivered by the Concessionaire to the Authority asking the latter to cure the breach or default specified in such notice;

“**Default Escrow Account**” shall have the meaning set forth in Recital B of this Agreement;

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

“**Security**” shall have the meaning set forth in Clause 3.1.

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.2 References to Clauses and Annexes are, unless stated otherwise, references to Clauses and Annexes of this Agreement.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. DEFAULT ESCROW ACCOUNT

2.1 Default Escrow Bank to act as trustee

2.1.1 The Authority hereby appoints the Default Escrow Bank to act as trustee for the Concessionaire and the Authority in connection herewith and authorises the Default Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Default Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Default Escrow Bank accepts such appointment pursuant to the terms hereof.

2.1.2 The Authority hereby declares that all rights, title and interest in and to the Default Escrow Account shall be vested in the Default Escrow Bank and held in trust for the Concessionaire and the Authority, and applied in accordance with the terms of this Agreement. No person other than the Concessionaire and the Authority shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Acceptance of Default Escrow Bank

The Default Escrow Bank hereby agrees to act as such and to accept the testing fees received by the Authority from the owners of the Transport Vehicles for availing Vehicle Testing pursuant to the provisions of this Agreement and the Concession Agreement. The Default Escrow Bank shall hold and safeguard the Default Escrow Account during the term of this Agreement and shall treat the amount in the Default Escrow Account as monies deposited by the Authority with the Default Escrow Bank. In performing its functions and duties under this Agreement, the Default Escrow Bank shall act in trust for the benefit of, and as agent for, the Concessionaire and the Authority, or their nominees, successors or permitted assigns, in accordance with the provisions of this Agreement.

2.3 Establishment of Accounts

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Authority shall open and establish the Default Escrow Account with the [●] (insert name of Branch) Branch of the Default Escrow Bank, and such account shall be maintained at all times until the termination of this Agreement under Clause 9 hereof. The Default Escrow Account shall be denominated in Rupees.

2.3.2 The Default Escrow Bank shall maintain the Default 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 Default Escrow Bank and the Authority shall, in accordance with Good Industry Practice, agree on the detailed mandates, terms and conditions, and operating procedures for the Default 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 Authority Account

The Default Escrow Bank and the Authority acknowledge that the testing fees received from the owners of Transport Vehicles for availing Vehicle Testing is being deposited in the Authority's existing account at the Default Escrow Bank (the "**Authority Account**"), and the Authority undertakes to maintain the Authority Account and continue to deposit therein such testing fees till the termination of this Agreement under Clause 9 hereof.

2.5 Default Escrow Bank's fee

The Default Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Default Escrow Bank and the Authority. For the avoidance of doubt, the Default Escrow Bank shall be entitled to deduct such fee and expenses from the monies deposited in the Default Escrow Account.

2.6 Rights of the Parties

Save and except as otherwise provided in the Concession Agreement, the rights of the Concessionaire and the Authority in the monies held in the Default Escrow Account are set forth in their entirety in this Agreement and the Concessionaire and the Authority shall have no other rights against or to the monies in the Default Escrow Account.

2.7 Substitution of the Concessionaire

The Parties 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 with effect from the date of substitution of the Concessionaire with the Nominated Company.

3. OBLIGATIONS OF THE DEFAULT ESCROW BANK

3.1 Creation of security interest

The Authority expressly agrees that it shall, on or before the Appointed Date, execute the Deed of Hypothecation and create a first priority charge/ security interest in favour of the Concessionaire on the Maximum Monthly Payment for and in respect of each and every month until termination of this Agreement (the "**Security**").

3.2 Transfer to Default Escrow Account

The Default Escrow Bank shall procure and ensure transfer of the testing fees received from the owners of Transport Vehicles for availing Vehicle Testing deposited into the Authority Account from the Authority Account to the Default Escrow Account, to the extent of and in the manner specified in this Agreement.

3.3 Statement of accounts

The Default Escrow Bank shall provide to the Authority and the Concessionaire, no later than 15 (fifteen) days commencing from the close of each month, a statement of accounts detailing all deposits and withdrawals into and from the Default Escrow Bank during the previous month. During any period, following the delivery of a notice of the occurrence of an Authority Escrow Default and until delivery of notice that the Authority Escrow Default has been cured and is no longer continuing, the Default Escrow Bank shall provide such statement of accounts to the Authority and the Concessionaire on a daily basis.

3.4 Protection of Concessionaire's interest

The Default Escrow Bank shall, at all times, act and discharge its functions and obligations under this Agreement in accordance with the principle of protecting and enforcing the rights and interest of the Concessionaire hereunder and the Security afforded to it herein for the full and timely performance by the Authority of the Secured Obligations in the manner contemplated under this Agreement and the Concession Agreement.

3.5 Monies to be held in trust

Monies received by the Default Escrow Bank under this Agreement shall, until used or applied in accordance with this Agreement, be held by the Default Escrow Bank in trust for the purposes for which they were received, and shall be segregated from other funds and property of the Default Escrow Bank.

3.6 Communications and notices

In discharge of its duties and obligations hereunder, the Default 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 Authority upon a certificate signed by or on behalf of the Authority;
- (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 Concessionaire of any notice or document received by it from the Authority in connection herewith; and
- (d) shall within 5 (five) business days after receipt, deliver a copy to the Authority of any notice or document received by it from the Concessionaire in connection herewith.

3.7 No set off

The Default 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 Default Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Default Escrow Bank that the monies held by the Default Escrow Bank in the Default Escrow Account shall not be considered as part of the assets of the Default Escrow Bank, shall in the case of

bankruptcy or liquidation of the Default Escrow Bank, be wholly excluded from the assets of the Default Escrow Bank in such bankruptcy or liquidation.

3.8 Regulatory approvals

The Default 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 Default Escrow Account. The Default Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Default Escrow Bank.

4. OBLIGATIONS OF THE AUTHORITY

4.1 General

4.1.1 The Authority covenants with the Concessionaire and the Default Escrow Bank that it will discharge the Secured Obligations in accordance with the provisions of the Concession Agreement and this Agreement.

4.1.2 The Authority hereby agrees and undertakes that until the termination of this Agreement, the testing fees received from owners of the Transport Vehicles for availing Vehicle Testing shall continue to be deposited into the Authority Account at the Default Escrow Bank and a sum equivalent to the Maximum Monthly Payment from the testing fees received by the Authority shall be routed every month through the Default Escrow Account in accordance with the terms hereof.

4.1.3 The Authority agrees and undertakes that it shall not take any actions inconsistent with the instructions given under this Agreement or interfere in any manner with the transfer of funds into the Default Escrow Account in accordance with the terms of this Agreement, or deliver or cause to be delivered to the Default Escrow Bank any amendment, modification or supplement to such instructions or any additional or new instructions regarding routing, deposit or withdrawal of funds by the Default Escrow Bank without the express written approval of the Concessionaire, which amendment, modification or supplement thereto or any such additional or new instructions shall be effective only if consented to by a duly authorised representative of the Concessionaire.

4.2 Creation of Charge

4.2.1 The Authority hereby agrees and undertakes that it shall create, under and pursuant to the Deed of Hypothecation, a first charge in favour of the Concessionaire over the Maximum Monthly Payment routed through the Default Escrow Account in pursuance of this Agreement, which charge shall remain in force and effect until payment and discharge of the Secured Obligations. The Authority further acknowledges and agrees that commencing from the date of execution of the Deed of Hypothecation and until payment and discharge of the Secured Obligations, the Authority's Lenders or any other entity shall not have any charge over any part of the Security, and that such charge, if created in future, in favour of Authority's Lenders or any other entity would be secondary and subordinate to the first charge created in favour of the Concessionaire pursuant to the Deed of Hypothecation. The Authority expressly agrees that it shall procure and ensure that the rights of the Concessionaire hereunder are not prejudiced in any manner whatsoever.

4.2.2 The Authority agrees and undertakes to provide such other documents, certificates and agreements as the Concessionaire or the Default Escrow Bank may reasonably request in

respect of creating a first charge in favour of the Concessionaire in accordance with Clause 4.2.1.

- 4.2.3 The Authority may, subject to the provisions of this Agreement and the Deed of Hypothecation, create any other security interest subordinate and secondary to (i) the first charge created in favour of the Concessionaire over the Maximum Monthly Payment routed through the Default Escrow Account or (ii) any part thereof, in favour of any person other than the Concessionaire for any reason whatsoever.

5. OPERATION & MANAGEMENT OF DEFAULT ESCROW ACCOUNT

5.1 General

- 5.1.1 All amounts deposited in the Authority Account shall be applied by the Default Escrow Bank in accordance with this Clause 5. The Parties expressly agree that all amounts routed through the Default Escrow Account pursuant to this Agreement shall constitute a part of the Security and shall not constitute payment of the Secured Obligations until applied to the payment thereof as hereinafter provided.

- 5.1.2 In the event of any dispute arising out of this Agreement, the Parties shall have recourse to the dispute resolution mechanism specified in Clause 12:

Provided that pending the full and final resolution of such dispute, the Default Escrow Bank shall retain the disputed amounts in the Default Escrow Account and shall not allow transfer or withdrawal of funds from the Default Escrow Account to the extent of the amount under dispute. Upon full and final settlement of the dispute, the Authority and the Concessionaire will jointly bring the decision of the Arbitrator, Commission or court, as the case may be, to the notice of the Default Escrow Bank who shall be bound by such decision and shall carry out such actions as are specified in the decision.

5.2 Deposits by the Authority

The Authority and the Default Escrow Bank agree and undertake that during the period commencing from the 10th (tenth) day and ending on the 30th (thirtieth) day of every month, the Default Escrow Bank shall deposit into the Default Escrow Account by daily transfers from the Authority Account, without any further authorisation or instructions from the Authority, funds aggregating an amount equal to the Maximum Monthly Payment, and shall continue to make such deposits every month until all Secured Obligations, including the obligations arising out of Termination Payment, are fully discharged.

5.3 Irrevocable instructions

The Authority irrevocably directs the Default Escrow Bank, and the Default Escrow Bank agrees to transfer from the Authority Account to the Default Escrow Account on a monthly basis, an amount equal to the Maximum Monthly Payment, and further route and transfer amounts equivalent to the Maximum Monthly Payment in the manner and to the extent specified in this Agreement.

5.4 Withdrawals during Operation Period

The Default Escrow Bank shall, during the Operation Period, procure and ensure that on or before the 25th (twenty fifth) day of every month, an amount equal to the Average Monthly

Testing Charges is retained in the Default Escrow Account for payment in respect of the Monthly Invoice for the preceding month, and the balance remaining may be withdrawn or transferred in accordance with the instructions of the Authority.

5.5 Drawal against Letter of Credit

5.5.1 If for any reason whatsoever, any amount due and payable in respect of the Monthly Invoice for and in respect of the preceding month is not paid in accordance with the provisions of the Concession Agreement, the Concessionaire may, at any time after the 27th (twenty seventh) day of the month in which the Payment Due Date shall have occurred, draw on the Letter of Credit, to recover such amount.

5.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that the amount covered by the Letter of Credit is at any time less than the Maximum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is a failure of the Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 15 (fifteen) days, the Default Escrow Bank shall transfer or withhold funds from the Default Escrow Account for the purpose of reinstating the Letter of Credit and shall continue such transfer or withholding of funds until the Letter of Credit has been fully replenished and reinstated for an amount equal to the Maximum Monthly Payment.

5.6 Withdrawals upon Termination

5.6.1 Upon Termination of the Concession Agreement, if the Authority fails to make the Termination Payment to the Concessionaire within a period of 30 (thirty) days from the date of demand by the Concessionaire under and in accordance with the provisions of the Concession Agreement, the Concessionaire may by notice, convey the necessary particulars and instruct the Default Escrow Bank to make the Termination Payment in accordance with this Clause 5.6.

5.6.2 Notwithstanding anything to the contrary in this Agreement, upon receipt of a notice from the Concessionaire under and in accordance with the provisions of Clause 5.6.1, the Maximum Monthly Payment shall be appropriated and transferred to the Escrow Account during each and every month until the Termination Payment and interest thereon are fully paid and discharged in accordance with the provisions of the Concession Agreement.

5.6.3 The Authority expressly acknowledges and agrees that upon Termination of the Concession Agreement, it shall continue to deposit the testing fees received from the owners of the Transport Vehicles for availing Vehicle Testing into the Authority Account in accordance with Clauses 2.4 and 4.1.2, and such revenues shall, subject to the provisions of Clause 5.6.2, be routed and deposited into the Default Escrow Account by the Default Escrow Bank till the Termination Payment and any interest thereon have been paid in full. For the avoidance of doubt, the Authority agrees that it shall not take any actions inconsistent with the instructions given hereunder by the Concessionaire or interfere in any way with the transfer of funds into the Default Escrow Account or with the further transfer of funds to the Escrow Account in accordance with the provisions of this Clause 5.6.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Authority

The Authority hereby represents and warrants to the Concessionaire and the Default Escrow Bank as of the date of this Agreement and at all times that:

- (a) this Agreement constitutes valid legal and binding obligations of the Authority, enforceable in accordance with the terms of this Agreement;
- (b) to the best of the knowledge of the Authority, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi-judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the ability of the Authority to perform its obligations under this Agreement or which purports to affect the legality, validity or enforceability of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Authority have been duly authorized by all requisite actions and will not constitute a violation of:
 - i. any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - ii. the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (d) no hypothecation, lien, charge, security interest or other encumbrance shall exist over or shall be created over the testing fees received by the Authority from the Vehicle Testing of Transport Vehicles routed through the Default Escrow Account pursuant to this Agreement, on and after the date of execution of the Deed of Hypothecation;

6.2 Representations and Warranties of the Default Escrow Bank

The Default Escrow Bank shall represent and warrant to the Authority and the Concessionaire as of the date of this Agreement and at all times that:

- (a) the Default Escrow Bank is a scheduled commercial bank and duly constituted under the [●] Act, having its head office at [●] and its branch among others, at [●] and validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid legal and binding obligations of the Default Escrow Bank enforceable in accordance with the terms of this Agreement;
- (c) there are no actions, suits or proceedings pending or threatened, against or affecting the Default Escrow Bank before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Default Escrow Bank to perform its duties and obligations under this Agreement; and
- (d) the execution, delivery and performance of this Agreement has been duly authorised by all requisite action, and will not constitute a violation of:
 - i. any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Default Escrow Bank, its assets or its business; or

- ii. the Default Escrow Bank's constitution or other documents or any indenture, contract or agreement to which it is a party or by which it or its property may be bound.

6.3 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Default Escrow Bank and the Authority that:

- (a) it has been duly constituted under the Companies Act, 1956 as amended and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Agreement and to perform its duties and obligations hereunder;
- (b) this Agreement constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Agreement;
- (c) the execution, delivery and performance of this Agreement by the Concessionaire has been duly authorized by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound; and
- (d) there are no actions, suits or proceedings pending or threatened, against or affecting the Concessionaire before any court or administrative body or arbitral tribunal that could reasonably be expected to affect adversely and materially the ability of the Concessionaire to perform its duties and obligations under this Agreement.

7. AUTHORITY'S COVENANTS

7.1 The Authority covenants that:

- (a) it shall create and maintain valid, perfected and enforceable first priority and ranking security interest and charge over all of the Security pursuant to the Deed of Hypothecation;
- (b) it shall not, on and after the date of the signing of the Deed of Hypothecation, grant or create a first priority security interest, hypothecation, charge, lien, security interest or other encumbrance over the Maximum Monthly Payment routed through the Default Escrow Account pursuant to this Agreement, throughout the term of this Agreement other than the Security created under the Deed of Hypothecation, in favour of the Concessionaire, save and except in compliance with the provisions of this Agreement or the Deed of Hypothecation;
- (c) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:

- (i) the execution, delivery, performance and observance by the Authority of this Agreement;
 - (ii) the validity, binding effect and enforceability of this Agreement; and the Deed of Hypothecation; and
 - (iii) the creation and perfection of the charge over the Maximum Monthly Payment routed through the Default Escrow Account pursuant to this Agreement;
- (d) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Agreement and the Deed of Hypothecation;
- (e) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Agreement and the Deed of Hypothecation; and
- (f) it shall inform the Concessionaire of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in the Agreement.

8. AUTHORITY ESCROW DEFAULT

8.1 Authority Escrow Default

Following events shall constitute an event of default by the Authority (an “**Authority Escrow Default**”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Concessionaire:

- (a) the Authority commits breach of this Agreement by failing to deposit the testing fees received from the owners of the Transport Vehicles for availing Vehicle Testing in any month into the Authority Account as provided herein and fails to cure such breach by depositing the same into the Authority Account within a period of 5 (five) business days thereof;
- (b) the Authority does not route an amount equal to the Maximum Monthly Payment from the testing fees received by the Authority through the Default Escrow Account in accordance with this Agreement and fails to cure such breach by depositing the same into the Default Escrow Account within a period of 5 (five) business days thereof.
- (c) the Authority causes the Default Escrow Bank to withdraw or transfer funds in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Default Escrow Account within a Cure Period of 5 (five) business days;
- (d) the Authority 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;
- (e) the Authority fails to pay the amounts due under any Monthly Invoice either through the Default Escrow Account or the Letter of Credit;
- (f) any representation or warranty made by the Authority in this Agreement shall be or shall have been incorrect in any material respect;

- (g) the amount covered by the Letter of Credit is at any time less than the Maximum Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice, and there is failure on the part of the Authority to replenish such shortfall and reinstate the Letter of Credit within a period of 7 (seven) days;
- (h) the Concessionaire is unable to draw on the Letter of Credit pursuant to the failure of the Authority to establish the Letter of Credit in accordance with the Concession Agreement; and
- (i) the Authority commits or causes any breach of the provisions of the Deed of Hypothecation and fails to cure the same within a Cure Period of 5 (five) business days.

Upon occurrence of an Authority Escrow Default, the consequence thereof shall be dealt with under and in accordance with the provisions of this Agreement, the Deed of Hypothecation and the Concession Agreement.

9. TERMINATION OF DEFAULT ESCROW AGREEMENT

9.1 Duration of the Default Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains outstanding from the Authority in respect of the Secured Obligations, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

9.2 Termination of the Agreement

The Authority may, by no less than 60 (sixty) days prior notice to the Default Escrow Bank and the Concessionaire, terminate this Agreement and appoint a successor Default Escrow Bank, provided that the successor Default Escrow Bank is acceptable to the Concessionaire. The termination of this Agreement shall take effect only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.3 Resignation by the Default Escrow Bank

The Default Escrow Bank may, after giving at least 180 (one hundred and eighty) days notice in writing to the Authority and the Concessionaire resign from acting as Default Escrow Bank for the purposes of this Agreement. In the event of such notice of resignation, the Authority and the Concessionaire shall forthwith appoint a successor bank as Default Escrow Bank and shall, no later than 60 (sixty) days prior to the effectiveness of such resignation, execute and cause such successor bank to execute a Default Escrow Agreement with the Authority and the Concessionaire. Provided that if a successor bank acceptable to the Concessionaire is found within a shorter period, the Concessionaire and Authority may waive the notice period of 180 (one hundred and eighty) days. For the avoidance of doubt, the resignation of the Default Escrow Bank hereunder shall be effective only upon coming into force of a Default Escrow Agreement with the successor Default Escrow Bank and the completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.4 Procedure for substitution

In the event that a successor Default Escrow Bank is appointed under the provisions of Clause 9.2 or 9.3, as the case may be, the Default Escrow Bank shall:

- (a) cease therewith accepting any payments or deposits into the Default Escrow Account;
- (b) transfer all amounts standing to the credit for the Default Escrow Account to the Default Escrow Account opened with the successor Default Escrow Bank to the satisfaction of the Concessionaire;
- (c) when all such amounts have been transferred, close the Default Escrow Account; and
- (d) within 30 (thirty) days of such closing, provide to the Authority and the Concessionaire a written report which shall fully reconcile all deposits to, and withdrawals from the Default Escrow Account.

9.5 Default Escrow Bank to continue

Notwithstanding the termination of the Default Escrow Agreement or the resignation of the Default Escrow Bank, as the case may be, the Default Escrow Agreement shall remain in force and the Default Escrow Bank shall continue to discharge its obligations thereunder until a successor Default Escrow Bank has been appointed and its Default Escrow Agreement has become effective upon completion of the procedure set forth in Clause 9.4 to the satisfaction of the Concessionaire.

9.6 Closure of Default Escrow Account

The Default Escrow Bank shall, at the request of the Authority and the Concessionaire, made on or after the payment by the Authority of all the Secured Obligations, and upon confirmation of receipt of such payments, close the Default Escrow Account and any sub-accounts thereunder and pay any amount standing to the credit thereof to the Authority. Upon closure of the Default Escrow Account hereunder, the Default Escrow Agreement shall be deemed to be terminated.

10. SUPPLEMENTARY DEFAULT ESCROW AGREEMENT

10.1 Supplementary default escrow agreement

The Authority shall be entitled to enter into a supplementary default escrow agreement with the Default Escrow Bank providing, *inter alia*, for detailed procedures and documentation in relation to the Default Escrow Account; provided that such supplementary default 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 default escrow agreement, the provisions of this Agreement shall prevail.

11. INDEMNITY

11.1 General indemnity

- 11.1.1 The Authority will indemnify, defend and hold the Concessionaire and the Default Escrow Bank 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 Authority of any of its obligations

under this Agreement or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

11.1.2 The Concessionaire will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire to fulfil any of its obligations under this Agreement, which materially and adversely affects the performance of the Authority's obligations under this Agreement, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessionaire, its officers, servants and agents.

11.1.3 The Default Escrow Bank will indemnify, defend and hold the Authority and 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 Default Escrow Bank to fulfil its obligations under this Agreement, which materially and adversely affects the performance of the Authority or Concessionaire's obligations under this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Default Escrow Bank, its officers, servants and agents.

11.2 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 11.1 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.

12. DISPUTE RESOLUTION

12.1 Dispute resolution

12.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a board of arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

12.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

13. MISCELLANEOUS PROVISIONS

13.1 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.

13.2 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 Government or 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).

13.3 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.

13.4 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.

13.5 Waiver

13.5.1 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.

13.5.2 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.

13.6 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.

13.7 Survival

13.7.1 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.

13.7.2 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.

13.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, 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 12.1 of this Agreement or otherwise.

13.9 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.

13.10 Continuation of Agreement

Any corporation or association into which the Default Escrow Bank may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Default Escrow Bank hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

13.11 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

13.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Agreement, the Authority and the Concessionaire shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Authority and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

13.13 Language

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

13.14 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.

13.15 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.

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 thereof³³

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of **THE DEFAULT
ESCROW BANK** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of **THE AUTHORITY** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:

1. [•]
2. [•]

³³ To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

SCHEDULE-P
LETTER OF CREDIT

DATE: [●]

To:

[●] [(the “**Concessionaire**”)]

From: (Specify the name and address of the bank issuing the Letter of Credit)³⁴ (the “**Bank**”)

The Bank hereby issues this unconditional, irrevocable and revolving monthly letter of credit (the “**Letter of Credit**”) no. [●] in favour of the Concessionaire named above, subject to the following terms and conditions:

1. On the instructions of the Authority, we hereby establish this Letter of Credit in favour of the Concessionaire in the maximum aggregate amount of Rs [●] (Rupees [●]) (the “**Monthly Payment**”) ³⁵, payable not more than once in a month, upon notice received from the Concessionaire to this effect.
2. The Letter of Credit shall come into force with effect from [●], 20[●] and shall be valid and effective upto the 31st (thirty first) day of March, 20[●] (indicate the year falling after the year in which the Letter of Credit is issued) (the “**Expiry Date**”), and shall be automatically and compulsorily renewed every year by the Bank, 60 (sixty) days prior to the date of expiry, for the period of the financial year that commences immediately after the Expiry Date, and shall continue to be so renewed until the end of the Concession Period. The date of expiry for the renewed period hereunder shall be deemed to be the Expiry Date for the purposes hereof.
3. This Letter of Credit provides security to the Concessionaire for the payment obligations of the Authority under the Concession Agreement dated [●] entered into between the Authority and the Concessionaire (the “**Concession Agreement**”) for a Project Facility at [●] in [●] district in the State of [●] on design, build, finance, operate and transfer basis.
4. Any reference to the Concession Agreement or other agreement is for information only and does not in any way incorporate the terms and conditions of such Concession Agreement or agreement into the terms and conditions of this Letter of Credit.
5. The Concessionaire may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:
 - (a) a copy of the Monthly Invoice (as defined in the Concession Agreement) issued by the Concessionaire to the Authority, any amounts whereof have remained unpaid; and

³⁴ As provided in Article 28 of the Concession Agreement, the bank issuing the Letter of Credit should be the bank where the Authority deposits the testing fees received from the owner of Transport Vehicles for getting Vehicle Testing.

³⁵ As provided in Clause 28.1.1 of the Concession Agreement, this amount shall be equal the Maximum Monthly Payment i.e. [●] number of Transport Vehicles multiplied by the Base Testing Rate. The Letter of Credit shall be modified once every year to reflect the revision in Testing Rate in accordance with the provisions of this Agreement.

- (b) a certificate from the Concessionaire, under the hand of an officer not below the rank of a Director of the Concessionaire, to the effect that the Monthly Invoice (as defined in the Concession Agreement) is in accordance with the Concession Agreement and that the amount due has remained unpaid and has not been disputed by the Authority.
6. The Bank shall honour such demand for payment, subject to it being compliant with the terms hereof, without inquiring whether the Concessionaire has a right as between itself and the Authority to make such demand. Payment hereunder shall be made within 2 (two) business days after receipt of the demand for payment.
7. If a demand for payment or the aforesaid accompanying documents do not conform to the provisions of this Letter of Credit, we shall give immediate notice to the Concessionaire that the demand for payment or the aforesaid documents, as the case may be, were not effected in accordance with the Letter of Credit, stating the reasons thereof and also specifying what the Concessionaire is required to do for making effective its demand for payment in accordance with the Letter of Credit.
8. The Expiry Date of this Letter of Credit shall be deemed to be automatically extended, 60 (sixty) days prior to its Expiry Date, without any act or deed, for an additional period of 1 (one) financial year from the respective Expiry Date, unless at least 180 (one hundred and eighty) days prior to any Expiry Date, the Bank gives notice in writing to the Concessionaire and the Authority that the Bank elects not to renew this Letter of Credit for any such additional period, in which case immediately after the Expiry Date of this Letter of Credit, the Bank shall cease to be the Default Escrow Bank under and in accordance with the provisions of the Default Escrow Agreement dated [●], entered into between the Bank, the Authority and the Concessionaire.
9. Partial drawal shall be permitted hereunder, provided that the maximum drawdown in any month shall not exceed the Monthly Payment.
10. The Authority shall cause the Letter of Credit to be replenished to the equivalent of Monthly Payment within 7 (seven) days of a drawdown.
11. All payments made under this Letter of Credit will be free and clear of, and without deduction for, any present or future fees, taxes, restrictions or conditions of any nature, and without setoff or counterclaim for any reason, except as required by law.
12. All costs and expenses in connection with this Letter of Credit are to be on account of the Authority.
13. Save and except as otherwise expressly stated, this Letter of Credit is subject to the International Standby Practice, ISP 98, International Chamber of Commerce Publication No. 590.
14. This Letter of Credit is governed by the Laws of India.
15. All notices, demand for payments and communications in regard to this Letter of Credit are to be given in writing at the addresses below:

To: [●] (Name of the Authority representative)
[●] (Designation)
[●] (Address, telephone and fax numbers)

To: [•] (Name of the Bank representative)
[•] (Designation)
[•] (Address, telephone and fax numbers)

To: [•] (Name of the Concessionaire representative)
[•] (Designation)
[•] (Address, telephone and fax numbers)

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

SIGNED, SEALED AND DELIVERED

For and on behalf of the Bank by:

(Signature)
(Name)
(Code Number)
(Address)

NOTES:

- (i) The Letter of Credit should contain the name, designation and code number of the officer(s) signing the Letter of Credit.
- (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-Q
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 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 substitutes); and
4. **THE GOVERNOR OF [•]**, represented by [•], and having its offices at [•] (hereinafter referred to as the “**Authority**” 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 procuring an automated inspection and certification center for automated testing of Transport Vehicles 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 Annex-A to form part of this Agreement].
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Concession Agreement**” means the Concession Agreement referred to in Recital (A) above [and annexed hereto as Annex-A], and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“**Cure Period**” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the 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 sub-accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

1.2.2 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

2. ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Concessionaire hereby appoints the Escrow Bank to act as trustee for the 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 the Testing Charges, Termination Payments and any other amounts that it receives from the Authority under the Concession Agreement;
- (c) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project Facility; and
- (e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the 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) all Testing Charges payable by it to the Concessionaire under the Concession Agreement;
- (b) 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 and License 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 Facility;
- (b) all payments relating to construction of the Project Facility including the License Fee 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 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 Facility;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including Concession Fees and License Fees, and any claims in connection with or arising out of Termination;
- (d) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 40 of the Concession Agreement;
- (e) outstanding Debt Service including the balance of Debt Due;
- (f) outstanding Subordinated Debt;
- (g) incurred or accrued O&M Expenses;
- (h) any other payments required to be made under the Concession Agreement; and
- (i) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facility, 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 34 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 decided finally by reference to arbitration to a board of arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State 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 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

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by:

For and on behalf of **SENIOR LENDERS** by the Lenders' Representative

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
Fax No.

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

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

For and on behalf of [•] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

In the presence of

1. [•]

2. [•]

SCHEDULE-R
PANEL OF CHARTERED ACCOUNTANTS

1. Panel of Chartered Accountants

Pursuant to the provisions of Clause 31.2 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this **Schedule-R**.

2. Invitation for empanelment

The Authority shall invite offers from all reputable firms of Chartered Accountants who fulfil the following eligibility criteria, namely:

- (a) the firm should have conducted statutory audit of the annual accounts of at least 100 (one hundred) companies registered under the Companies Act, 1956, of which at least 10 (ten) should have been public sector undertakings;
- (b) 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;
- (c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State 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

6.3 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

6.4 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-R**.

**SCHEDULE-S
VESTING CERTIFICATE**

1. The Chairman, [●] (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 36.2 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this [●] day of [●], 20[●] at [●].

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED For and
on behalf of [●] by:

For and on behalf of **CONCESSIONAIRE** by

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

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

In the presence of:

1. [●]

2. [●]

**SCHEDULE-T
SUBSTITUTION AGREEMENT**

This SUBSTITUTION AGREEMENT is entered into on this the [●] day of [●] 20[●].

AMONGST

1. **THE GOVERNOR OF [●]**, represented by [●], and having its offices at [●] (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns);
2. [●], 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 procuring an automated inspection and certification center for automated testing of Transport Vehicles 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 Annex-A to form part of this Agreement].
- (B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- (C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.
- (D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.

NOW 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, incorporated under the provisions of the Companies Act, 1956, 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 34 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.

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.

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 7 (seven) 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 7 (seven) 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.

3.5 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 35 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 decided by reference to arbitration to a board of arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders' Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre

for Alternative Dispute Resolution, New Delhi (the “**Rules**”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be [●] and the language of arbitration shall be English.

9. MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at [●] 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

SIGNED, SEALED AND DELIVERED

For and on behalf of **Concessionaire**
by:

For and on behalf of [●] by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)

(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. [•]

SCHEDULE-U
VEHICLE TESTING REPORT
[Report format to be inserted]

SCHEDULE-V

DEED OF HYPOTHECATION

THIS DEED OF HYPOTHECATION is entered into on this the [●] day of [●] 20 [●]

BETWEEN

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. **THE GOVERNOR OF [●]**, represented by [●], and having its offices at [●] (hereinafter referred to as the “**Authority**” 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 procuring an automated inspection and certification center for automated testing of Transport Vehicles 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 Annex-A to form part of this Agreement].
- (B) To secure the Authority’s payment obligations to the Concessionaire under and in accordance with the Concession Agreement, the Authority is required to establish a default escrow mechanism, *inter alia*, on the terms and conditions stated therein and in the Default Escrow Agreement dated [●] entered into between the Parties and the Default Escrow Bank, [a copy of which is annexed hereto and marked as Annex-B to form part of this Agreement].
- (C) To further secure the Secured Obligations, the Authority has agreed to grant a charge and security interest in favour of the Concessionaire on the Authority’s right, title and interest on and in the Default Escrow Account and all funds, amounts, deposits and monies deposited therein, in accordance with the terms hereof.

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:

“**Deed**” means this Deed of Hypothecation and any amendment thereto made in accordance with the provisions contained herein;

“**Default Escrow Agreement**” shall have the meaning set forth in Recital B of this Deed;

“**Hypothecated Interest**” shall have the meaning ascribed thereto in Clause 2.2.1 of this Deed;

“**Concession Agreement**” shall have the meaning set forth in Recital A of this Deed;

1.2 Interpretation

1.2.1 The words and expressions beginning with capital letters and defined in this Deed shall have the meaning ascribed thereto herein, and the words and expressions used in this Deed and not defined herein but defined in the Concession Agreement or the Default Escrow Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement or the Default Escrow Agreement, as the case may be.

1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Deed.

1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Deed.

2. SECURITY INTEREST

2.1 Covenant to pay

In consideration of the Concessionaire having entered into the Concession Agreement and agreeing to make available to the Authority the Project, subject to the terms and conditions set out in the Concession Agreement, the Authority hereby covenants with the Concessionaire that it shall pay to the Concessionaire all the Secured Obligations in the manner set out in the Concession Agreement.

2.2 Creation of Charge

2.2.1 As security for the payment of the Secured Obligations when due in accordance with the Concession Agreement, the Authority, as the legal and/or beneficial owner of the Hypothecated Interest hereby hypothecates by way of first priority charge in favour of the Concessionaire, all right, title, interest, benefit, claims and demands whatsoever of the Authority in respect of the revenues deposited into the Default Escrow Account, but not exceeding the Maximum Monthly Payment for and in respect of any month (collectively, the “**Hypothecated Interest**”).

2.2.2 The charge created pursuant to this Clause 2.2 by the Authority over the Hypothecated Interest in favour of the Concessionaire is a floating charge and it shall not hinder the Authority from selling, leasing or otherwise disposing of or dealing with the Hypothecated Interest or any part thereof, save and except as provided in Clause 3.1.

Provided that the floating charge created pursuant to this Clause 2.2 shall forthwith and automatically be converted into a fixed charge upon the occurrence of any Authority Escrow Default.

2.2.3 At any time after an Authority Escrow Default occurs and is continuing, the Concessionaire shall have the authority to act upon and enforce the provisions of this Deed in accordance with the provisions hereof and the Concession Agreement.

2.2.4 Following the occurrence of an Authority Escrow Default, the Concessionaire shall not, save and except as may be required under the Concession Agreement, be obliged before taking steps to enforce the Security constituted by or pursuant to this Deed to:

- (a) take action or obtain judgement or any arbitration award against the Authority in any court or before any arbitrator;
- (b) make or file any claim or proof in a winding up or dissolution of the Authority; and
- (c) exercise any legal remedies, which may be available to it under or in respect of the Concession Agreement.

2.3 Release of Charge

2.3.1 Upon termination of the Concession Agreement in terms thereof, the first priority charge created under Clause 2.2 shall be released and vacated on the date when all the Secured Obligations have been paid in full.

2.3.2 In case of the occurrence of the events described in Clause 2.3.1, the Concessionaire shall, at its own costs and expense, forthwith:

- (a) cede the benefit of the first priority charge on and security interest in the Hypothecated Interest;
- (b) re-assign, retransfer or re-convey to the Authority, or as it may direct, the Hypothecated Interest; and
- (c) execute all such documents and do all such other acts as may be required by the Authority in connection with the release of the benefit of the charge on and security interest in the Hypothecated Interest.

3. FURTHER ENCUMBRANCES

3.1 Except for the charge created under this Deed and permitted under Clause 2.2, the Authority shall not, without the prior written consent of the Concessionaire, which may be granted or rejected in its sole and absolute discretion within thirty (30) days of receipt of a request in this regard from the Authority, create or suffer any mortgage, charge, lien or encumbrance in or to the Hypothecated Interest or any part thereof or do or allow anything that may prejudice this charge on the Hypothecated Interest.

3.2 The Authority shall be entitled to create a subordinate/second charge in favour of the Authority's lenders or any other entity over the Hypothecated Interest, provided however that the Authority

shall procure and ensure that the rights of the Concessionaire under this Deed are not prejudiced in any manner.

4. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Authority

The Authority hereby represents and warrants to the Concessionaire as of the date of this Deed and at all times that:

- (a) this Deed constitutes valid legal and binding obligations of the Deed, enforceable in accordance with the terms of this Deed;
- (b) the charge and security interest created hereunder constitute a first priority security interest in favour of the Concessionaire;
- (c) to the best of its knowledge, there is no pending or threatened action, suit or proceeding before any court, tribunal or judicial or quasi-judicial body or Government that could reasonably be expected to materially and adversely affect the financial condition or operations of the Authority or the ability of the Authority to perform its obligations under this Deed or which purports to affect the legality, validity or enforceability of this Deed;
- (d) the execution, delivery and performance of this Deed by the Authority have been duly authorised by all requisite actions and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitral tribunal applicable or relating to the Authority, its assets or its business; or
 - (ii) the Authority's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it or its property may be bound;
- (e) no hypothecation, lien, charge, security interest or any other encumbrance shall exist over or shall be created over the Maximum Monthly Payment routed through the Default Escrow Account after the date hereof, except as permitted under this Deed; and
- (f) as of the date hereof and until the expiry of this Deed, the Authority lenders or any other entity do not and shall not have any first ranking charge, security interest or other encumbrance over the Maximum Monthly Payment routed through the Default Escrow Account, except a second/and subordinate charge which may be created in their favour in accordance with the provisions of Clauses 3.1 and 3.2.

4.2 Representations and Warranties of the Concessionaire

The Concessionaire hereby represents and warrants to the Authority that:

- (a) it has been duly constituted under the Companies Act, 2013, including any re-enactment or amendment thereof, and is validly existing under the laws of India and has all requisite legal power and authority to enter into this Deed and to perform its duties and obligations hereunder;

- (b) this Deed constitutes the valid, legal and binding obligations of the Concessionaire enforceable in accordance with the terms of this Deed; and
- (c) the execution, delivery and performance of this Deed by the Concessionaire has been duly authorised by all requisite action, and will not constitute a violation of:
 - (i) any statute, judgment, order, decree or regulation of any court, Government Instrumentality or arbitration tribunal applicable or relating to the Concessionaire, its assets or its business; or
 - (ii) the Concessionaire's constitution or other documents or any indenture, contract or agreement to which it is Party or by which it is Party or by which it or its property may be bound.

5. AUTHORITY'S COVENANTS

5.1 The Authority covenants that during the term of this Deed:

- (a) it shall do all acts and things as may be reasonably required or appropriate to give effect to the charge/security interest created in favour of the Concessionaire on and in the Hypothecated Interest and take all steps to maintain such charge and security interest in full force and effect on and in the Hypothecated Interest;
- (b) it shall obtain and maintain at its own expense any license, permission, consent or authorisation and pay any taxes or duties, including without limitation, stamp duties, which may be required in order to create, maintain and preserve the charge/security interest granted under this Deed and to enable the Concessionaire to have the full benefit of this Deed;
- (c) it shall procure all amendments, approvals, consents or waivers as may be required from the Authority's Lenders and any other financing parties from whom such amendments, approvals, consents or waivers are required, for the creation, maintenance and enforcement of the charge/security interest contemplated hereby;
- (d) it shall not grant or create a first priority security interest, hypothecation, charge, lien, security interest or any other encumbrance over the Maximum Monthly Payment routed through the Default Escrow Account pursuant to the Default Escrow Agreement, throughout the term of this Deed other than the Security created hereunder in favour of the Concessionaire, save and except in compliance with the provisions of this Deed;
- (e) it shall obtain in a timely manner and maintain in full force and effect (or where appropriate, renew) all authorisations that are necessary and that are required to be in the name of the Authority, in connection with:
 - (i) the execution, delivery, performance and observance by the Authority of this Deed;
 - (ii) the validity, binding effect and enforceability of this Deed; and
 - (iii) the creation and perfection of the charge, over the Maximum Monthly Payment routed through the Default Escrow Account, pursuant to this Deed;

- (f) it shall effect all registrations, recordings, filings and notarisations, which are or may become necessary to enable the performance by the Authority of its obligations under this Deed;
- (g) it shall execute such further documents, instruments and register or record the same and take any other action necessary to give effect to this Deed;
- (h) it shall inform the Concessionaire of any receipt of notice, claim or legal proceedings instituted against it which might affect the payment obligations as set out in this Deed;
- (i) deposit or cause to be deposited in the Authority Account the testing fees received from the owners of the Transport Vehicles for availing Vehicle Testing immediately upon the receipt thereof; and
- (j) after the occurrence and during the continuance of an Authority Escrow Default, deliver to the Concessionaire (not later than the second business day of each month) copies of summary statements of the testing fees received during the immediately preceding month.

6. FURTHER ACTIONS

The Authority shall, from time to time, upon the request of the Concessionaire, promptly and duly execute or procure the execution of all such further documents and conduct such filings and registration, and take any other action (at the sole expense of the Concessionaire) as the Concessionaire may reasonably require in order that the Concessionaire may obtain the full benefit of the charge created by this Deed and of the rights and powers hereby granted.

7. INDEMNITY

7.1 General indemnity

7.1.1 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 any breach by the Authority of any of its obligations under this Deed or on account of failure of the Authority to comply with Applicable Laws and Applicable Permits.

7.1.2 The Concessionaire will indemnify, defend and hold the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Concessionaire to fulfil any of its obligations under this Deed, which materially and adversely affects the performance of the Authority's obligations under this Deed, other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Concessionaire, its officers, servants and agents.

7.2 Notices 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, 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.

8. CONTINUING SECURITY

8.1 The Security created by this Deed shall be a continuing security for the performance and discharge of the Secured Obligations and the security so created shall:

- (a) not be set aside by any intermediate payment or satisfaction of any part of the amount hereby secured; and
- (b) be in addition to and shall not in any way be prejudiced or affected by any collateral or other security now or hereafter held by the Concessionaire for all or any part of the Secured Obligations.

8.2 The charge granted hereby and the rights, powers and remedies conferred on the Concessionaire by this Deed or by Applicable Laws shall not be discharged, impaired or otherwise affected by:

- (a) any time or other indulgence given or agreed to be given by the Concessionaire to the Authority or to any other party providing Security for the Secured Obligations;
- (b) any amendment to the Concession Agreement or the Default Escrow Agreement not agreed to by the Concessionaire;
- (c) any release or exchange of Security or obligations granted or undertaken pursuant to the Concession Agreement or the Default Escrow Agreement or any documents connected therewith;
- (d) any other act, event or omission which but for this provision would impair or discharge the Authority's liability hereunder; and
- (e) any change in the structure or organisation of the Authority as a result of a Change in Law, insolvency of the Authority or otherwise.

9. DISPUTE RESOLUTION

9.1 Dispute Resolution

9.1.1 Any dispute, difference or claim arising out of or in connection with this Deed, which is not resolved amicably, shall be decided finally by reference to arbitration to a board of arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternate Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

9.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be the capital of the State and the language of arbitration shall be English.

10. MISCELLANEOUS PROVISIONS

10.1 Governing law and jurisdiction

This Deed 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 Deed.

10.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Deed 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 Deed or any transaction contemplated by this Deed, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Government or 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).

10.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in this Deed shall prevail over the Concession Agreement.

10.4 Alteration of terms

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

10.5 Waiver

10.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Deed:

- (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 Deed;
- (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 Deed in any manner.

10.5.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Deed 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.

10.6 No third-party beneficiaries

This Deed is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

10.7 Survival

10.7.1 Termination of this Deed:

- (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 Deed 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.

10.7.2 All obligations surviving the cancellation, expiration or termination of this Deed shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Deed.

10.8 Severability

If for any reason whatever any provision of this Deed is or becomes invalid, illegal or unenforceable or is declared as such by any court or tribunal of competent jurisdiction or any other instrumentality, 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 9.1 of this Deed or otherwise.

10.9 Successors and assigns

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

10.10 Continuation of Deed

Any corporation or association into which the Authority may be converted or merged, or with which it may be consolidated or to which it may sell or transfer its business and assets as a whole or substantially as a whole or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, shall be and become the successor Authority hereunder without the execution or filing of any agreement, document or instrument of any further act, deed or conveyance on the part of the Parties, anything herein to the contrary notwithstanding.

10.11 Notices

All notices or other communications to be given or made under this Deed shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be sent. Such change shall be effective when all the Parties have notice of it.

10.12 Specimen signatures

As soon as practicable but in no event later than 15 (fifteen) days from the date of this Deed, the Authority and the Concessionaire shall deliver to each other and to the Default Escrow Bank, specimen signatures of their respective authorised officers duly attested by their respective banks for the purposes of this Agreement. The Authority and the Concessionaire shall have the right to change their respective authorised officers by delivering specimen signatures of their new authorised officers.

10.13 Language

All notices, certificates, correspondence and proceedings under or in connection with this Deed shall be in English.

10.14 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.

10.15 Original Document

This Deed may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Deed.

10.16 Effectiveness

This Deed shall become effective on and from the date hereof.

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

SIGNED, SEALED AND
DELIVERED

THE COMMON SEAL OF
CONCESSIONAIRE has been affixed pursuant

For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

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 thereof³⁶:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

³⁶ To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.