

**PM MITRA PARK UTTAR PRADESH LIMITED**

**Public Private Partnership**

**In**

**Setting Up and Operating**

**Development, Operation and Maintenance of the PM MITRA Mega Textile and Apparel Park at Lucknow, Uttar Pradesh through Public Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer (DBFOT) basis.**

**DRAFT CONCESSION AGREEMENT**

**02.12.2024**

## TABLE OF CONTENTS

<b>Part I</b>	5
<b>Preliminary</b>	5
ARTICLE 1 - DEFINITIONS AND INTERPRETATION	8
<b>Part II</b>	11
<b>The Concession</b>	11
ARTICLE 2 - SCOPE OF THE PROJECT	11
ARTICLE 3 - GRANT OF CONCESSION	12
ARTICLE 4 - CONDITIONS PRECEDENT	15
ARTICLE 5 - OBLIGATIONS OF THE CONCESSIONAIRE	18
ARTICLE 6 - OBLIGATIONS OF THE AUTHORITY	30
ARTICLE 7 - REPRESENTATIONS AND WARRANTIES	32
ARTICLE 8 - DISCLAIMER	36
<b>Part III</b>	37
<b>Development and Operations</b>	37
ARTICLE 9 - PERFORMANCE SECURITY	37
ARTICLE 10 - SITE & RIGHT OF WAY	40
ARTICLE 11 - UTILITIES, ASSOCIATED ROADS AND TREES	43
ARTICLE 12 - DESIGN AND CONSTRUCTION OF THE PROJECT	46
ARTICLE 13 - MONITORING OF CONSTRUCTION	53
ARTICLE 14 - COMPLETION CERTIFICATE	56
ARTICLE 15 - ENTRY INTO COMMERCIAL SERVICE	59
ARTICLE 16 - CHANGE OF SCOPE	60
ARTICLE 17 - OPERATION AND MAINTENANCE	63
ARTICLE 18 - SAFETY REQUIREMENTS	72
ARTICLE 19 - MONITORING OF OPERATION AND MAINTENANCE	73

---

ARTICLE 20 - SECURITY	76
Article 21 - CHANGE IN SPECIFICATION AND TEHNOLOGICAL UPGRADATION	77
ARTICLE 22 - INDEPENDENT EXPERT	78
<b>Part IV</b>	80
<b>Financial Covenants</b>	80
ARTICLE 23 - FINANCIAL CLOSE	80
ARTICLE 24 – Grant	82
ARTICLE 25 - CONCESSION FEE	83
ARTICLE 26 - USER FEE	86
ARTICLE 27 - COMMISSIONING OF COMPETING FACILITY	87
ARTICLE 28 - ESCROW ACCOUNT	88
ARTICLE 29 - INSURANCE	90
ARTICLE 30 - ACCOUNTS AND AUDIT	93
<b>Part V</b>	95
<b>Force Majeure and Termination</b>	95
ARTICLE 31 - FORCE MAJEURE	95
ARTICLE 32 - COMPENSATION FOR BREACH OF AGREEMENT	101
ARTICLE 33 - SUSPENSION OF CONCESSIONAIRE’S RIGHTS	101
ARTICLE 34 - TERMINATION	103
ARTICLE 35 - DIVESTMENT OF RIGHTS AND INTEREST	109
ARTICLE 36 - DEFECTS LIABILITY AFTER TERMINATION	113
<b>Part VI</b>	114
<b>Other Provisions</b>	114
ARTICLE 37 - ASSIGNMENT AND CHARGES	115
ARTICLE 38 - CHANGE IN LAW	117

---

ARTICLE 39 - LIABILITY AND INDEMNITY	118
ARTICLE 40 - RIGHTS AND TITLE OVER THE SITE	121
ARTICLE 41 - DISPUTE RESOLUTION	122
ARTICLE 42 - DISCLOSURE	125
ARTICLE 43 - REDRESSAL OF PUBLIC GRIEVANCES	126
ARTICLE 44 - MISCELLANEOUS	127
ARTICLE 45 - DEFINITIONS	130
SCHEDULES	146
SCHEDULE-A - SITE OF THE PROJECT	
SCHEDULE-B - DEVELOPMENT OF THE PM MITRA PARK .....	
SCHEDULE-C - SERVICES	
SCHEDULE-D - SPECIFICATIONS AND STANDARDS	
SCHEDULE-E- APPLICABLE PERMITS	
SCHEDULE-F - PERFORMANCE SECURITY	147
SCHEDULE-G - PROJECT COMPLETION SCHEDULE	
SCHEDULE-H - DRAWINGS	
SCHEDULE-I - TESTS	
SCHEDULE-J - COMPLETION CERTIFICATE	
SCHEDULE-K- MAINTENANCE MANUAL, SERVICE MAINTENANCE REQUIREMENTS	
SCHEDULE-L - SAFETY REQUIREMENTS	
SCHEDULE-M - SELECTION OF INDEPENDENT EXPERT	
SCHEDULE-N - TERMS OF REFERENCE FOR INDEPENDENT EXPERT	
SCHEDULE-O - MONTHLY FEE STATEMENT	
SCHEDULE-P - SCHEDULE OF FEE	
SCHEDULE-Q - MINIMUM GUARANTEED REVENUE SHARE	

---

SCHEDULE-R - ESCROW AGREEMENT

---

SCHEDULE-S - PANEL OF CHARTERED ACCOUNTANTS

---

SCHEDULE-T - VESTING CERTIFICATE

---

SCHEDULE-U - SUBSTITUTION AGREEMENT

---

SCHEDULE-V - USER CHARTER

---

SCHEDULE-W - DISPUTE RESOLUTION BOARD

---

SCHEDULE-X - OPERATIONS AND MAINTENANCE OF RAILWAY SIDING

---

SCHEDULE -Y-MAINTENACE STANDARDS OF ACCESS ROAD

Draft Concession Agreement

Draft Concession Agreement

**Part I  
Preliminary**

**CONCESSION AGREEMENT**

THIS AGREEMENT<sup>1</sup> is entered into on this the \*\*\*\*\*day of\*\*\*\*\*, 20\*\*\*\*\*

**BETWEEN**

1 **THE PM MITRA PARK UTTAR PRADESH LIMITED, a company for Special Purpose Vehicle incorporated under the Companies Act, 2013 acting through Sri/Smt. \_\_\_\_\_, 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 One Part;

**AND**

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

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

**WHEREAS:**

- (A) In keeping with goal of making the Indian textile sector globally competitive GoI’s focus has been on increasing textile manufacturing by building the best-in-class manufacturing infrastructure, up-gradation of technology fostering innovation, enhancing skills and reducing costs in the sector. With the experience of competing economies, it was felt that there is a need to develop large scale and integrated world class industrial facilities for the textiles industry to build scale, reduce logistics costs and improve its competitiveness. Accordingly, the Government of India approved PM Mega Integrated Textile Regions and Apparel (PM MITRA) Parks Scheme for the Textile industry. After following due processes, it was decided by GOI that one of the PM MITRA Parks will be established in the state of [Uttar Pradesh].
- (B) In furtherance to this, the Authority has resolved to establish one such [PM MITRA Textile Park]<sup>3</sup> at [Lucknow], in [Lucknow and Hardoi] District in the State of [Uttar Pradesh] through Public Private Partnership on Design, Build, Finance, Operate and Transfer (“**DBFOT**”) basis in accordance with the terms and conditions set forth in this Agreement.
- (C) The Authority had accordingly invited proposals by its Request for Proposal dated \*\*\*\*\* (the “**Request for Proposal**” or “**RFP**”) for selection of bidder to build, operate and maintain the Project in the identified district on a PPP basis.
- (D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/Consortium} comprising\*\*\*\*\*and\*\*\*\*\*collectively the “**Consortium**”) with\*\*\*\*\*as its lead member (the “**Lead Member**”)and issued the Letter of

---

1  
2  
3

Award No. \*\*\*\*\*dated\*\*\*\*\* (hereinafter called the “LOA”) to the {selected bidder/ Consortium} requiring, *inter alia*, the execution of this Concession Agreement within 45 (forty five) days of the date of issue thereof.

- (E) {The Selected Bidder/ Consortium has since promoted and incorporated the Concessionaire as a company under the Companies Act 2013 with CIN\*\*\*\*\*, and} has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the {selected bidder/Consortium under the LOA,} including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.
- (F) {By its letter dated \*\*\*\*\* the Concessionaire has also joined in the said request of the Selected Bidder/Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/Consortium, only for the purposes hereof}.
- (G) The Authority has {agreed to the said request of the Selected Bidder/Consortium and the Concessionaire, and has} accordingly agreed to enter into this Concession Agreement with the Concessionaire for implementation of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

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



## ARTICLE 1 - DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 45) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

### 1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

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

- (m) 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;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**Lakh**” means a hundred thousand (100,000) and “**Crore**” means ten million (10,000,000);
- (q) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the “**winding-up**”, “**dissolution**”, “**insolvency**” or “**reorganization**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of Authority hereunder or pursuant hereto in any manner whatsoever;
- (t) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Expert shall be valid and effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Expert, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of 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;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (x) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;

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

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

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

### **1.3 Measurements and arithmetic conventions**

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

### **1.4 Priority of agreements, clauses and schedules**

1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part 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;
- (c) i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

**Part II**  
**The Concession**

Draft Concession 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, design, financing and construction of the Project on the Site set forth in **Schedule-A** and as specified in **Schedule-B** together with provision of the Project Assets in conformity with the Specifications and Standards and other provisions of this Agreement;
  - (b) procurement of the equipment and all other material required for construction, operation, maintenance of the Project in conformity with the Specifications and Standards and other provisions of this Agreement;
  - (c) procurement and maintenance of software and technology to be used for providing the Services in accordance with the Specifications and Standards and other provisions of this Agreement;
  - (d) marketing, operation and maintenance of the PM MITRA PARK LUCKNOW in conformity with the Specifications and Standards and other provisions of this Agreement;
  - (e) provide Services in conformity with the Specifications and Standards and other provisions of this Agreement;
  - (f) Development, operation, and maintenance of Commercial Zone at the Site as specified in **Schedule-B and D** and in accordance with the provisions of this Agreement; and
  - (g) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
  - (h) Sub license and / or lease of developed land as per the approved Master Plan in accordance with the provisions of this Agreement.
  - (i) Create and finalize the Master Plan after getting it duly approved by the Authority.

## ARTICLE 3 - GRANT OF CONCESSION

### 3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws, the Applicable Permits and Good Industry Practice, the Authority hereby grants to the Concessionaire and the Concessionaire hereby accepts the exclusive right, license and Authority to design, finance, construct, operate and maintain the Project at the Site (the “**Concession**”) and provide Services for a period of 50 (fifty) years, commencing from the Appointed Date and ending on the Transfer Date (the “**Concession Period**”), which includes construction of the Project Assets and to exercise and/or enjoy the rights, power, privileges and entitlements as set forth in this Agreement and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall entitle 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) Right of Way, access, and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (b) plan, design, develop, procure, construct, finance, upgrade, equip, operate, maintain and manage the Project as per the terms and conditions of this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice and transfer the same to the Authority or designated Government agency on the Transfer Date;
  - (c) operate, manage, and maintain the PM MITRA PARK LUCKNOW and regulate the use thereof by third parties;
  - (d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the PM MITRA PARK LUCKNOW and/ or availing any Services or any part thereof and refuse entry to any User if the Fee due is not paid;
  - (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement including Specifications and Standards, Applicable Laws, Applicable Permits and Good Industry Practice;
  - (f) provide Services to the Users and/or any other service providers as per the terms and conditions of this Agreement including Specifications and Standards, Good Industry Practice and Applicable Law;
  - (g) 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;
  - (h) 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 operating and maintaining the PM MITRA PARK LUCKNOW and/ or providing Services;
  - (i) neither assign, transfer, or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the PM MITRA PARK LUCKNOW nor sell, transfer, exchange, lease, sub-license 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 35.

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

### **3.3 Commercial Zone Development**

Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the entire facilities as specified in **Schedule-B**, subject to conditions specified in **Schedule-D** and to exploit such development for commercial purposes in accordance with the provisions of Article (“**Commercial Zone Development**”) with the right to sub-license/lease any or all parts thereof by means of Project Agreements.

### **3.4 Extension of Concession Period**

In the event that extension of the Concession Period shall have become due under and in accordance with the provisions of this Agreement, the Concessionaire shall apply to the Authority forthwith for extension of the Concession Period in accordance with the provisions of this Agreement. For the sake of clarity, it is understood, agreed, and acknowledged by the Parties that the maximum extension of the Concession Period shall not, under any circumstances, be more than 10% (ten per cent) of the Concession Period in aggregate. The Concessionaire agrees and acknowledges that any and all provisions of this Agreement relating to grant of extension in the Concession Period by the Authority shall always be deemed to be subject to the limitation and restriction prescribed by this Clause 3.4.

## ARTICLE 4 - CONDITIONS PRECEDENT

### 4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 5, 6, 7, 8, 9, 10, 25, 31, 41 and 44, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (ninety) 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;
- (b) procured Applicable Permits, if any, relating to environmental protection, conservation of the Site and forest clearance<sup>4</sup>. For the sake of clarity, it is understood and acknowledged by the Parties that the Authority shall procure the Applicable Permits in pursuance to this Clause 4.1.2 (b) based on the concept Master Plan provided in Schedule B;
- (c) procured land use conversion certificate for and in respect of the land forming part of the Site under Clause 10.3.1 and 10.3.2.

Provided that upon request in writing by the Authority, the Concessionaire may, in its discretion, grant extension of time, not exceeding 120 (one hundred and twenty) days, for fulfilment of the Conditions Precedent set forth in this Clause 4.1.2.

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

- (a) provided Performance Security to the Authority which 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 4.3.1, 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;
- (b) executed and procured execution of the Substitution Agreement;
- (c) procured all the Applicable Permits specified in Part-A of Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled shall have been satisfied in full and such Applicable Permits are in full force and effect;
- (d) executed and procured execution of the Escrow Agreement;

---

<sup>4</sup> Any subsequent change in requirement of permits will be Concessionaire’s responsibility.



- (e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
- (f) achieved Financial Close and delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
- (g) delivered to the Authority from {the Consortium Members} confirmation, in original, of the correctness of their representations and warranties set forth in Sub-clauses (k), (l) and (m) of Clause 7.1 of this Agreement; and
- (h) 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;
- (i) satisfied itself about the availability of minimum 90% of the Construction Zone as per joint memorandum signed in accordance with clause 10.3.1 and 10.3.2, subject to the condition that the available Construction Zone shall be sufficient for achievement of COD. Furnishing a copy of the Consortium Agreement;
- (j) Submitted a copy of the approved Master Plan to the Authority.

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.

Notwithstanding anything to the contrary contained in this Agreement, but subject to extension, if any, of the period set forth in Articles 4 and 15 on account of a Force Majeure Event, in the event that COD does not occur, for any reason whatsoever, within the period set forth in Clause 15.1 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 caused with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

Upon Termination under Clause 4.1.4, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, The Authority shall be entitled to encash therefrom an amount equal to Bid Security.

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

#### **4.2 Damages for delay by the Authority**

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum amount of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Authority for non-fulfilment of Conditions Precedent shall be payable within 30 (thirty) days of achievement of fulfilment of Conditions Precedent. The Damages payable hereunder shall be the sole remedy available to the Concessionaire for delay by the Authority.

Provided that in the event of delay by the Concessionaire in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.3, no Damages shall be due or payable by the Authority under this Clause 4.2 until the date on which the Concessionaire shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.3.

#### **4.3 Damages for delay by the Concessionaire**

4.3.1 In the event that (i) the Concessionaire does not procure fulfilment or waiver of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority, Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty per cent) of the Performance Security, provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent. Provided that upon reaching such limit of 20% (twenty per cent), the Authority may, in its sole discretion and subject to the provisions of Clause 9.2, terminate the Agreement.

Provided further that in the event of delay by the Authority in procuring fulfilment of the Conditions Precedent specified in Clause 4.1.2, no Damages shall be due or payable by the Concessionaire under this Clause 4.3 until the date on which the Authority shall have procured fulfilment of the Conditions Precedent specified in Clause 4.1.2

#### **4.4 Commencement of Concession Period**

The date on which Financial Close is achieved and all the Conditions Precedent specified in Clause 4.1 are satisfied or waived, as the case may be, shall be the Appointed Date which shall be the date of commencement of the Concession Period. For the avoidance of doubt, the Parties agree that the Concessionaire shall, upon occurrence of the Appointed Date hereunder, by notice convey the particulars thereof to the Authority, and shall thereupon be entitled to commence construction on the Project. However, the Concessionaire may prior to the Appointed Date, subject to prior written approval from the Authority, undertake shifting of obstructing utilities at the Site and/or cutting of trees as set forth in Article 11.

#### **4.5 Deemed Termination upon delay**

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

Draft Concession Agreement

## ARTICLE 5 - OBLIGATIONS OF THE CONCESSIONAIRE

### 5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the, design, engineering, procurement, construction, operation and maintenance of the Project in accordance with the provisions of this Agreement and take reference to the concept Master Plan as specified under Schedule – B, Annexure - II and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, from time to time, undertake expansion or augmentation of the Project Assets in accordance with the provisions of this Agreement and Good Industry Practice
- 5.1.5 Save and except as expressly provided in this Agreement, the Concessionaire shall, at all times during the subsistence of this Agreement, pay all taxes, levies, duties cesses and all other statutory charges, dues, assessments or outgoings payable except property tax in respect of the Project, Services and other services, or in respect of the materials stored therein, which may be levied by any Government Instrumentality.
- 5.1.6 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Governmental Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits for the construction, commissioning and operating the PM MITRA PARK LUCKNOW (including operating and maintaining the facilities of the park but not limiting Effluent Treatment Plant, Water Treatment Plant and Processing House, other than those set forth in Clause 4.1.2, and obtain and keep in force and effect such Applicable Permits in conformity with Applicable Laws;

Provided that if the Concessionaire undertakes any revision or modification or variation in the concept Master Plan prepared by the Authority as annexed in Schedule B or on account of any actions or omissions taken by or attributable to the Concessionaire, due to which the Applicable Permits procured by the Authority as set forth in Clause 4.1.2 (including any studies, reports or assessments prepared by the Authority), requires any further approval or any modification therein or vitiates the Applicable Permits, approvals or sanctions (including any studies, reports or assessments prepared by the Authority), in such condition the Concessionaire shall be solely responsible, at its cost and expense, to apply for and obtain such further approvals or modifications in the existing approvals or fresh approval or modifications in the studies, reports or assessments prepared by the Authority, as the case may be.

The Authority may, without being under any obligation, at its discretion provide reasonable assistance to the Concessionaire in procuring such modifications or fresh approvals subject to Concessionaire fulfilling the applicable eligibility requirements.

- (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.
- (c) perform and fulfil its obligations under all the Financing Agreements executed for the development of the Project.
- (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (f) 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
- (g) procure that all facilities and amenities within the Project are operated and maintained in accordance with Good Industry Practice and the Users have non-discriminatory access for use of the same in accordance with the provisions of this Agreement and Applicable Laws;
- (h) ensure that Users are treated with due courtesy and consideration and provided with ready access to Services and information;
- (i) provide, or cause to be provided, Services in accordance with the provisions of this Agreement and Applicable Laws;
- (j) procure the temporary supply of electricity during the Construction Period to the Project from the grid, including procuring standby arrangements for supply of electricity for maintenance of Services in the event of outages or failure of electricity supply from the grid;
- (k) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement;
- (l) ensure that the equipment used in the Project are in good condition and conform to the international specifications and efficiency standards;
- (m) ensure procurement of the latest and the most efficient technology and comply with provisions of Article 21;
- (n) transfer the Project Assets to the Authority upon Termination/Expiry of this Agreement, in accordance with the provisions thereof,
- (o) procure, as required, the appropriate utilities and Services required or used for the Project
- (p) keep, on the Site, a copy of this Agreement, publications named in this Agreement, the Drawings, documents relating to the Project, and Change of Scope Order and other communications given under this Agreement. The Authority's representative and its authorised personnel shall have the right of access to all these documents at all reasonable times;

- (q) cooperate with authorized representative of the Authority and personnel of any public Authority;
- (r) not interfere unnecessarily or improperly with the convenience of the public, Users, the Authority and its representatives, employees, agents etc.;
- (s) undertake all necessary superintendence to plan, arrange, direct, manage, inspect and test the Project Assets;
- (t) construct and make alterations or additions to the building/structure/installations on the Site at its own cost after prior written approval of the Authority and strictly in accordance with the sanction and approval of the concerned local authority or of any other authority, the approval of whom has been mandated under the law for the time being in force. Such alterations shall not compromise the safety aspects. The cost of alterations shall not be part of the Total Project Cost;

However, the Concessionaire shall be at liberty, after giving prior written intimation to the Independent Expert to undertake minor modifications / alterations within the industrial structure / building (for the sake of clarity, no structural modifications / alterations shall be undertaken without prior written approval of the Authority) subject to approvals and permissions as may be required as applicable.

- (u) at its own cost, provide and install the, furniture equipment, fixtures and things necessary for implementing the Project;
- (v) at its own cost bear the cost of maintaining to PM MITRA PARK LUCKNOW boundary, develop roads inside PM MITRA PARK LUCKNOW boundary to achieve seamless connectivity of PM MITRA PARK LUCKNOW with external road connectivity.
- (w) bear and pay all the existing and future rates, Taxes, levies, duties, cess and charges of whatsoever nature in respect of the Project throughout the term or the extended term of the Concession Period, if any;
- (x) provide the Project security arrangements on round the clock basis and shall maintain and run the Project in accordance with Good Industry Practice and as may be required by the Authority;
- (y) maintain the Site and structure/installations/fixtures in good conditions and order to the satisfaction of the Authority and as per the terms of this Agreement and also abide by the directions given by the relevant departments as may be entrusted with the enforcement of rule and regulation regarding labour safety, health sanitation, cleanliness and hygiene;
- (z) not store any hazardous or explosive substance on the Site unless specific license is obtained from the regulatory body after taking prior consent from the Authority. The Concessionaire shall provide and maintain necessary fire-fighting and fire protection systems in the Site as per the Applicable Law
- (aa) observe and perform all the terms, covenants, conditions and stipulations contained herein and shall not do, omit or suffer to be done any act, deed or thing whereby Authority's rights with respect to the PM MITRA LUCKNOW PARK, the assets therein or any part/portion of the PM MITRA PARK LUCKNOW in any way prejudiced, affected or extinguished;
- (bb) use the Site or any premises erected thereupon for the exclusive purpose of providing the Services to the users of the PM MITRA PARK LUCKNOW (“Users”) and bonafide visitors to the Site.

- (cc) The Authority/Authority Representative reserves the right to inspect and conduct checks to observe/witness the fulfilment of the obligations by the Concessionaire under this Agreement. If in the opinion of the Authority, the PM MITRA PARK LUCKNOW is not being maintained and operated as per the Specifications and Standards as required to be provided under this Agreement or are not being provided or are not being properly maintained or the level of services is below the standards as provided under the Schedules hereto the Concessionaire shall take or cause to be taken such corrective measures upon being served with a notice to the said effect by the Authority. Failure of the Concessionaire to comply with the requirements of the notice within the time period stipulated therein would be considered a breach of the terms of this Agreement by the Concessionaire;
- (dd) Maintain a complaints register at a conspicuous place in the Site for recording complaints, if any, of the Users of the PM MITRA PARK LUCKNOW and maintain a website for registering of complaints, if any, online, with access to the Authority. Within one week following the close of each calendar month, the Concessionaire shall send to the Authority a true photocopy of such pages of the complaints register on which any entries have been recorded and also upload on the website of any complaint during the course of such month along with detail, of the action taken by the Concessionaire on such complaints. The Concessionaire expressly agrees that the Authority may in its discretion direct the Concessionaire to take such further reasonable action as the Authority may deem appropriate for a fair and just redressal of any grievance;
- 5.1.7 The Concessionaire shall, at its own cost and expense, adhere to green principles in accordance with applicable Green Rating for Integrated Habitat Assessment Version, applicable Law, and ensure sustainable operations as per Good Industry Practise in the PM MITRA PARK LUCKNOW *inter alia* by means of:
- (a) extensive horticulture and plantation along with adequate sewage treatment;
  - (b) recycling water for landscaping and horticulture;
  - (c) ensuring use of natural materials such as dry-stone cladding for exteriors;
  - (d) ensuring use of bio-methanation for treatment of bio waste and for generation of cooking gas;
  - (e) rainwater harvesting;
  - (f) installing roof-top solar panels;
  - (g) procuring use of single/ double glazed windows with matched u-factor for increased energy efficiency in the Project Facility; and
  - (h) ensuring adequate ventilation and natural day light in the Project Facility.
  - (i) All other sustainability measures

## **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 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and

comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/or observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any addition, replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due of the Concessionaire and shall respond to the request for consent no later than 30 (thirty) days from the receipt of such request from the Concessionaire. This Clause 5.2.3 is applicable for Financing Agreements executed by the Concessionaire for the development of the Project.
- 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, where under 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 the 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 endeavour to convey its decision thereon no later than 30 (thirty) days from the date receipt of request in this regard appended with all necessary and supporting documents. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

### **5.3 Obligations relating to Change in Ownership**

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



- 5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
- i. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of 25% (twenty-five per cent) or more of the total Equity of the Concessionaire; or
  - ii. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, 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 no later than 30 (thirty) days from the date of receipt of request for approval appended with all the necessary and required details. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Security and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;
  - (b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
  - (c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of 25% (twenty five per cent) or more of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.
- 5.3.3 Upon the expiry or earlier termination of the Concession Period, the Concessionaire shall handover to the Authority the peaceful and vacant possession of the Site including the structure / installations / fixtures erected or installed on the same. Failure to handover the same within a period of 7 (seven) days of the expiry or earlier termination of the Concession Period would make the Concessionaire liable for payment of penalty equivalent to 1% (one per cent) of the last annual Concession Fee including Revenue Share per day up-to a maximum of 15 (fifteen) days, after which the Authority shall be entitled to enter upon and take possession of the Site including the Project on as-is- where-is basis.

#### **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 prior written approval of the Authority from national security point of view for requisite regulatory permits and approvals including employment / residential visas and work permits, if any required, and the obligation to apply for and obtaining 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 Employment of trained personnel**

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

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

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

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

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

The Concessionaire shall ensure:

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

#### **5.6 Branding of the PM MITRA PARK Lucknow**

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

#### **5.7 Facilities for differently abled and elderly persons**

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier free environment for the differently abled and for elderly persons using the PM MITRA PARK LUCKNOW.

## **5.8 Personnel engaged by the Concessionaire**

The Concessionaire shall ensure that the personnel engaged by the Concessionaire or any of its agency in the performance of its obligations under this Agreement are at all times appropriately qualified, skilled, and experienced in their respective functions in conformity with Good Industry Practice.

## **5.9 Authority's observation on Personnel**

The Authority's Representative may, under exceptional circumstances due to legal/statutory/administrative requirement and for reasons to be specified in writing, direct the Concessionaire to remove any member of the Concessionaire's personnel engaged by the Concessionaire or any of its agency. Provided that any such direction issued by the Authority's Representative shall specify the reasons for the removal of such person.

## **5.10 [Removal of Personnel engaged]**

The Concessionaire shall on receiving such a direction from the Authority's Representative order for the removal of such person or persons with immediate effect. It shall be the duty of the Concessionaire to ensure that such persons are removed from the Site within 10 (ten) days of or earlier as per legal/statutory/administrative requirement any such direction being issued in pursuance of Clause 5.10. The Concessionaire shall further ensure that such persons have no further connection with the works, maintenance, or operations under this Agreement. The Concessionaire shall then appoint (or cause to be appointed) a replacement within 7 (seven) days but not later than 30 (thirty) days. All consequential effects of such removal and appointment or replacement, including legal/statutory/administrative issues, if any, shall be the sole liability of the Concessionaire.

## **5.11 Risks and Responsibility for the Project**

The Concessionaire shall bear full risk and take full responsibility for the care of the Project, and of the Materials, goods and equipment for incorporation therein, from the date of signing of this Agreement until the date of handing over the Project to the Authority.

Except as otherwise stated in this Agreement the Concessionaire accepts complete responsibility for having foreseen all difficulties and costs of successfully completing the Project.

## **5.12 Obligations relating to non-discriminatory access**

- 5.12.1 The Concessionaire shall manage and operate the PM MITRA PARK LUCKNOW on a common user basis and provide non-discriminatory access to all Users in accordance with the provisions of this Agreement and shall refrain from adopting any unfair or discriminatory practice against any User or potential user thereof.

## **5.13 Obligations relating to competition**

The Concessionaire shall not, either directly or through Associated Firms, or in any other manner acquire control or interest in the operations or services of any other Textile Park within a radius of [50 (fifty) kilometers]<sup>5</sup> from the PM MITRA PARK LUCKNOW such that its share exceeds 25% (twenty five per cent) of such control or interest in the operations or services of such Textile Park. The Concessionaire shall

---

5

also with proper due diligence ensure and procure that no person who controls or operates any other Textile Park within a radius of [50 (fifty) kilometers]<sup>6</sup> from the PM MITRA PARK LUCKNOW shall acquire control or interest in the operations or services of the PM MITRA PARK LUCKNOW such that the share of such person exceeds 25% (twenty five per cent) of such control or interest in the operations or services of the PM MITRA PARK LUCKNOW leading to Change in Ownership in terms of Clause 5.3. Any breach by the Concessionaire of this Clause 5.14 shall constitute a Concessionaire's event of default in terms of Article 34.

#### **5.14 Obligations relating to security clearance**

Notwithstanding anything to the contrary contained in this Agreement, the engagement of employees, staff and personnel of the Concessionaire and of its Contractors and subcontractors shall always be subject to Applicable Laws. For the avoidance of doubt, it is agreed that 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 a 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.

#### **5.15 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, dues, assessments, or outgoings payable in respect of the Project Facilities.

#### **5.16 Auditing the Project**

- 5.16.1 The Concessionaire shall maintain books recording the procedure followed at the Project.
- 5.16.2 The Concessionaire expressly agrees to furnish to its Statutory Auditor the details of the records maintained in furtherance of Clause 5.16.1.
- 5.16.3 On or before the thirtieth day of June 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 Project, and (b) details of the Users availing the Services with the type of Service availed.
- 5.16.4 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. The Authority may appoint Additional Auditors or Concurrent Auditors for verification.

#### **5.17 Accidents**

In the event of an accident on the Site, the Concessionaire shall, by most expeditious means, inform the concerned civil & police authorities and 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

---

<sup>6</sup> The distance shall be finalized on project-to-project basis with approval from the competent authority.

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 Assets 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. Provided that the Concessionaire shall not make any communication with any news media unless specifically authorised by the Authority.

#### **5.18 Obligations relating to aesthetic quality of the PM MITRA PARK LUCKNOW**

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

#### **5.19 Obligations relating to noise control**

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

#### **5.20 Obligations relating to management of the Concessionaire**

The management of the Concessionaire shall be carried out as per and in compliance with the Applicable Laws directions issued by the Authority in terms of this Agreement /any regulatory body from time to time and/or in compliance with provisions of the Companies Act, 2013 and its amendment(s) from time to time. It shall be the sole and absolute responsibility and obligation of the Concessionaire to remain in compliance and strict adherence with all the Applicable Laws / directions from the Authority in terms of this Agreement / regulatory body and/or in compliance with provisions of the Companies Act 2013 and its amendments from time to time and the Authority shall not be held responsible or liable for any breach or no compliance of the same by the Concessionaire.

#### **5.21 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.

#### **5.22 Water and Electricity**

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

Authority shall provide external power [and external water supply<sup>7</sup>] connection to the Site Gate no later than one month for construction works from the Appointed Date. For the purpose of operation and running the manufacturing units the Authority will provide power and water supply up to the gate of the park within 18 (eighteen) months but not later than 24 (twenty four) months of the Appointed Date. The Concessionaire shall, on and before the COD, set up a meter at its own cost to measure the power and water consumption. During the Project construction and operation, the Concessionaire shall pay all the invoices relating to water and electricity connections, running charges as and when due. For the avoidance of doubt, it is agreed that the Concessionaire shall install its own sub-station and related utilities for steady supply of electricity and water as may be necessary for construction and operation of the Project.

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

### **5.23 Obligations relating to information**

- 5.23.1 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.
- 5.23.2 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.

### **5.24 Obligations relating to procurement of goods and services**

- 5.24.1 The Concessionaire agrees and undertakes that it shall procure contracts, goods and services for the construction and operation of the PM MITRA PARK LUCKNOW in a fair, transparent, and efficient manner, and without any undue favour or discrimination in this behalf. In pursuance hereof, it shall frame a procurement policy specifying the principles and procedures that it shall follow in awarding contracts for supply of goods and services, and shall place the policy on its website for the information of general public and all interested parties. The policy shall also include the principles and procedures to be followed for leasing, sub-licensing or grant or allocation of any space, building, rights, or privileges to private entities.

### **5.25 Obligations relating to medical aid**

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

---

<sup>7</sup> The provision of external water supply shall apply on project to project basis.

## ARTICLE 6 - OBLIGATIONS OF THE AUTHORITY

### 6.1 Obligations of the Authority

- 6.1.1 The Authority shall, at its own cost and expense undertakes, comply with, and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with, and perform, subject to and in accordance with the provisions of this Agreement and Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits, required from any Government Instrumentality for implementation and operation of the Project;
  - (b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
  - (c) procure that no barriers are erected or placed on or about the Project by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
  - (d) pay property tax in relation to the Site on which it is established;
  - (e) subject to and in accordance with Applicable Laws and this Agreement, grant to the Concessionaire the authority to regulate use of the Project;
  - (f) assist the Concessionaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project;
  - (g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for discharging by Concessionaire or its Contractors their respective obligations under this Agreement and the Project Agreements;
  - (j) provide to the Concessionaire, upon receiving the Performance Security under Clause 9.1, the Site in accordance with the provisions of Article 10;
  - (k) Provide access to, paved all weather road as shown in the project map attached in Schedule A, the PM MITRA PARK LUCKNOW as shown in Layout Plan attached in Schedule B;

- (l) the Authority shall facilitate the maintenance of the external Roads in collaboration with the concerned Government Department;
- (m) Authority shall be responsible for the land use conversion of the Site of the Project;
- (n) subject to the Concessionaire complying with Applicable Laws, making requisite applications provide reasonable assistance to the Concessionaire in procuring electricity supply within the Project;
- (o) provide to the Concessionaire the Right of Way, access, leave and license rights to the Site in accordance with the provisions of Article 10;
- (p) 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;
- (q) Provide external power [and external water supply<sup>8</sup>] connection<sup>9</sup> to the Site no later than 6 months from Appointed Date.
- (r) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, and subject to the applicable guidelines issued by Government of India, from time to time, facilitate and provide reasonable support to the Concessionaire in procuring statutory approvals for setting up of custom facilities in the PM MITRA PARK LUCKNOW;

Upon breach of its obligations as set forth in Clause 6.1.2(r) for power supply, the Authority shall be liable to compensate to the Concessionaire the loss by extending the Concession period by the proportion that can be mitigated by such extension. However, such extension shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire.

## 6.2 Obligations relating to Competing Facility

Authority shall procure that during the subsistence of this Agreement, neither the Authority nor any Government Instrumentality shall, at any time construct or cause to be constructed any new Competing Facility (Only Textile & Apparel) Park within a distance of [25 (twenty five) kilometres]<sup>10</sup> radius of the PM MITRA PARK LUCKNOW until [25 (twenty five)] years from the Appointed date or lease of 90% (ninety per cent) of the plots 50% Commercial Production, whichever is earlier. (“**Exclusivity Period**”) Upon breach of its obligations hereunder, the Authority shall be liable to compensate to the Concessionaire the loss by extending the Concession Period by the proportion that can be mitigated by such extension. However, such extension shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire.

In the eventuality that a Competing Facility is constructed within a distance of a 50 (fifty) kilometres<sup>11</sup> radius of the PM MITRA PARK LUCKNOW in violation of the conditions specified above, the

<sup>8</sup> The provision of external water supply shall apply on project to project basis.

<sup>9</sup> Tapping and distribution will be in the scope of the Concessionaire

<sup>10</sup> The distance shall be finalized on project-to-project basis with approval from the competent authority.

<sup>11</sup> The distance shall be finalized on project-to-project basis with approval from the competent authority.



Concessionaire can request written communication from the Authority stating breach of this clause to seek redressal i.e. extension of the Concession Period by the Authority.

### **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 to be utilized for the Project purpose only; provided that it shall not have the effect of increase in financial liability or obligations on the Authority and it shall not jeopardize the interest of the Authority in any manner, and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Authority, but the repayment thereof shall be completed no later than 2 (two) years prior to expiry of the Concession Period.

Draft Concession Agreement

## ARTICLE 7 - REPRESENTATIONS AND WARRANTIES

### 7.1 Representations and warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organized and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other Authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legal binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/their} Associates, hold not less than 51% (fifty one per cent) of its issued and paid-up Equity as on the date of this Agreement; and that no member of the Consortium whose technical and financial capacity was evaluated for the short-listing in response to the RFP shall during the Construction Period and 3 (three) year from the Schedule Completion Date, hold not less than: (i) 26% (twenty six per cent) of such Equity and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement.
- (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) {The selected bidder / each Consortium Member} is duly organized and validly existing under the laws of the jurisdiction of its incorporation or registration, as the case may be, and has requested the Authority to enter into this Agreement with {itself/the Concessionaire} pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith;
- (q) The Concessionaire shall procure and furnish to the Authority the confirmation from the “selected bidder/Consortium Members” to the effect that all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposal or otherwise, is to the best of their knowledge and belief, if true and accurate in all material respects.
- (r) all undertakings and obligations of the Concessionaire arising from the RFP or otherwise shall be binding on the Concessionaire as if they form part of this Agreement
- (s) it shall remain solely liable to perform its obligations under this Agreement as well as ensure performance of obligations by its sub-licensees, lessees, Contractors/Sub-Contractors, designers, consultants or agents and nothing contained in this Agreement shall create any contractual relationship or obligation between the Authority and Concessionaire’s Contractors/Sub-Contractors, designers, consultants or agents in any manner whatsoever.
- (t) It shall promptly inform the Authority in writing before initiating any of the following (including any matter incidental or consequential thereto) and give due consideration to the recommendations or suggestions , if any, made by the Authority in respect thereof:

- (i) to apply for corporate insolvency proceedings under the Insolvency and Bankruptcy code, 2016;
- (ii) for various other matters pertaining to the winding up of the Concessionaire;

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

## **7.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

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

## **7.3 Disclosure**

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

## ARTICLE 8 - DISCLAIMER

### 8.1 Disclaimer

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

**Part III**  
**Development and Operations**

Draft Concession Agreement

## ARTICLE 9 - PERFORMANCE SECURITY

### 9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations during the Construction Period, provide to the Authority no later than 30 (thirty) days from the date of this Agreement, in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure I of Schedule-F), or Account Payee Demand Draft or Banker's Cheque or irrevocable and unconditional e-Bank Guarantee from a Bank for a sum equivalent to Rs. 84,00,00,000/- (Rupees Eight Four Crore Only)<sup>12</sup> in the form set forth in Schedule-F (the "**Performance Security**") towards the Project. 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 30 (thirty) 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 Conditions Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 34. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 34.

### 9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall not be released upon the Concessionaire has not expended on Project construction an aggregate sum that is not less than 40% (Forty per cent) of the Total Project Cost and the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

---

<sup>12</sup> Calculated @ approximately 5% (five per cent) of the estimated amount specified in the definition of Total Project Cost

#### **9.4 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.

Draft Concession Agreement



## ARTICLE 10 - SITE & RIGHT OF WAY

### 10.1 The Site

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

### 10.2 License, Access and Right of Way

- 10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out any surveys, investigations and soil tests that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise. The Concessionaire acknowledges that the condition of the Site is no inferior to the condition as it was on the date of Bid Due Date.
- 10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the “**Licensed Premises**”), on an “as is where is” basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all 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 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the license, upon the Termination/expiry of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensee(s)/Contractor(s)/Sub-Contractor(s), agent(s), representative(s) the license in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.
- 10.2.4 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the licence granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Authority, and the Concessionaire consents to it being registered for this purpose.
- 10.2.5 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.
- 10.2.6 The license, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that the

existing roads within the Site or an alternative thereof are open to traffic at all times during the Concession Period.

### **10.3 Procurement of the Site**

- 10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative, the Independent Expert 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, trees and any other immovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the “**Appendix**”) specifying in reasonable detail those parts of the Site to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in 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 license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid license and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the 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 such that the Appendix shall not include more than 10% (ten per cent) of the total land area of the site required and necessary for the Project, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2. For the avoidance of doubt, the Authority acknowledges and agrees that the Appendix shall not include any land which may prevent the construction of any critical element of the Project without which the Completion Certificate or Provisional Certificate may not be granted.
- 10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.
- 10.3.4 The Authority shall make best efforts to procure and grant, no later than 180 (one hundred and eighty) 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. 100 (Rupees one hundred) per day for every 1000 (one thousand) square meters or part thereof, commencing from the 181<sup>st</sup> (one hundred eighty-first) day of the Appointed Date and until such Right of Way of the balance land is procured. The Damages payable in terms of this Clause shall be the sole remedy available to the Concessionaire and the Authority shall not be liable for any consequential loss or damage to the Concessionaire.
- 10.3.5 Upon receiving the site and 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 Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete

on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which the Right of Way is granted within 120 (one hundred twenty) days of the Appointed Date shall be completed 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 12.6.3.

#### **10.4 Site to be free from Encumbrances**

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties, and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

#### **10.5 Lease/ sub license**

Save and except as otherwise permitted by this Agreement, the Concessionaire may lease/sub-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, only after the prior written approval of the Authority.

#### **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 PM MITRA PARK LUCKNOW and the performance of its obligations under this Agreement.

#### **10.8 Access to the Authority, Authority Representative and Independent Expert**

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

#### **10.9 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights,

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

- (i) The Authority shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period and to the extent permissible under the Applicable Law so as to enable the Concessionaire to continue its Construction Works for development of PM MITRA PARK LUCKNOW with such modifications as may be deemed necessary;
- (ii) In case any portion of the Site becomes unavailable for development and implementation of the Project on account of archaeological and / or geological finds, at any time during the Concession Period, the Authority and Concessionaire shall mutually discuss the matter to arrive at a mutually acceptable resolution;
- (iii) However, if on account of any archaeological or geological finds:
  - a) the entire Site, going forward, becomes unavailable for the Project; or
  - b) the Concessionaire and Authority are unable to arrive at a mutually acceptable resolution pursuant to sub clause 10.9 (ii) above, inspite of all reasonable endeavours

In such an event the Concessionaire shall be under an obligation to forthwith, upon written notice and demand, in this regard, from the Authority to peacefully and unconditionally vacate and handover the Site to the Authority and the Concession Agreement shall be deemed to stand terminated, with mutual consent on and with effect from such date as may be specified by the Authority in the notice. The Concessionaire shall be entitled to receive Termination Payment in accordance with Clause 31.9.1

#### **10.10 Acceptance of Site for Project Development**

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

- (a) inspected the Site, including all structures there at and its surroundings;
- (b) satisfied itself as to the nature of the climatic and general physical conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, and the nature of the design, work and materials necessary for the performance of its obligations under this Agreement; and
- (c) obtained for itself all necessary information as to the risks, contingencies and all other circumstances including contingency under Clause 10.9 above, which may influence or affect the Concessionaire and its rights and obligations under or pursuant to this Agreement.

## **ARTICLE 11 - UTILITIES, ASSOCIATED ROADS AND TREES**

### **11.1 Existing utilities and roads**

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

### **11.2 Shifting of obstructing utilities**

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

### **11.3 Utilities required for Project**

11.3.1 The Concessionaire shall, subject to applicable laws and with assistance of the Authority, undertake construction of any utilities required for construction, maintenance and operation of Project, including electrical lines, water pipelines, telephone lines, waste disposal lines, etc. at his own cost. These utilities shall also include any external connections except [water and]<sup>13</sup> power.

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

### **11.4 Felling of trees**

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause material adverse effect on construction, operation, and maintenance of the Project. The Concessionaire shall be responsible for cutting of the trees along with transplant / replantation as per the applicable law. The cost of felling of trees and transplant / plantation shall be borne by the Concessionaire. In the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the

---

<sup>13</sup> The provision of external water supply shall apply on project-to-project basis.

Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

Draft Concession Agreement

## ARTICLE 12 - DESIGN AND CONSTRUCTION OF THE PROJECT

### 12.1 Construction of the Project

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

### 12.2 Obligations prior to commencement of construction

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

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

### 12.3 Master Plan for the Site

12.3.1 The Concessionaire shall construct the Project by taking due references to the concept Master Plan set forth in Schedule- B. The Concessionaire shall prepare and finalize the Master Plan (“**Master Plan**”), in terms of this Article 12, taking due references to the concept Master Plan set forth in Schedule- B.

Provided that the Authority, at this stage, shall be free to provide strategic guidance including recommendations on the types of industries that may be prioritized for land allotment, ensuring alignment with the overall development objectives of the park.

12.3.2 The Concessionaire may, at any time during the Concession Period, seek approval of the Authority for modifications in the Master Plan to improve or augment the service delivery or to expand any part or

facility of the Project, and upon request hereunder, the Authority shall grant approval to the extent reasonably required in pursuant of this Clause 12.3.2. For the avoidance of doubt, the Parties expressly agree that the decision of the Authority in this regard will be final.

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

## **12.4 Drawings**

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

- (a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of detailed conceptual plan, layout plan, detailed architectural and structural designs, engineering drawings, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule (as required for proper execution and completion of the Project as envisaged by the Authority) in relevance to layout provided by Authority and all Drawings to the Independent Expert for review;
- (b) By submitting the Drawings for review to the Independent Expert, the Concessionaire shall be deemed to have represented that it has determined and verified that the site specific design and engineering, including the field construction criteria related thereto, are in conformity with the Specifications and Standards; Applicable Laws and Good Industry Practice
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Expert on the Drawings submitted pursuant 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 12.4.1, the Concessionaire shall submit to the Authority for review and comments, its Drawings including location and layout (as required for proper execution and completion of the Project as envisaged by the Authority and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of the Clause 12.4.1 shall apply mutatis mutandis to the review and comments hereunder.



- (g) Within 90 (ninety) days of Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Expert a complete set of as-built Drawings, in 2 (two) hard copies and in its editable digital format or in such other medium or manner as may be acceptable to the Authority, reflecting the Project as actually designed and developed, including an as-built survey illustrating the layout of the and setback lines, if any, of the buildings and structures forming part of Project Facilities.
- (h) The Concessionaire shall at its cost, charges and expenses, prepare the Structural Designs and engineering Drawings in conformity with the Scope of the Project, Specifications and Standards and other provisions of this Agreement, with due approval from Authority ( based on IE recommendation)
- (i) Based on the approved detailed conceptual plan (as per Clause 2.1(a)) design and Drawings shall be developed in conformity with the Specifications and Standards set forth in Schedule-D. In the event, the Concessionaire requires any relaxation in design standards due to site conditions, the alternative design, criteria for such section shall be provided for review of the Independent Expert
- (j) The Concessionaire shall not be entitled to any extension of time for completing construction or any other relief on account of delay caused due to providing any clarification or in resubmitting the Designs and Drawings. Provided however the Authority at its sole discretion may suitably extend the Construction Period or provide other relief to compensate for any such delay not attributable to the Concessionaire.
- (k) Any cost or delay in Construction arising from the time taken for review of Drawings by the Independent Expert shall be borne by the Concessionaire and the Authority shall not be held liable for the same
- (l) The Project shall be executed in accordance with the Drawings provided by the Concessionaire in accordance with the provisions of this Clause 12.4 and the observations of the Authority or Independent Expert thereon as communicated pursuant to the provisions of Clause 12.4. Such Drawings shall be amended or altered with approval of the Authority upon recommendation by the Independent Expert. If a Party becomes aware of an error or Defect of a technical nature in the design or Drawings, that Party shall promptly give notice to the other Party of such error or Defect and shall cause Suspension of Construction of such part of the Project.
- (m) In the event that the Independent Expert has observed that the Designs and Drawings are not in conformity with the Project Requirements, the Concessionaire shall promptly and without any undue delay revise and resubmit the Designs and Drawings or satisfy the Independent Expert with regards its compliance.

## **12.5 Architectural Design**

- 12.5.1 The Concessionaire shall at all times conform to the architectural parameters, controls, building profiles, facades, dimensions, designs and building materials.
- 12.5.2 The Concessionaire shall, prior to commencement of construction of Project, furnish to the Authority and to the Independent Expert, its architectural drawings in conformity with the Architectural Design. Within 15 (fifteen) days of the receipt of such architectural drawings, the Authority and/ or the Independent Expert shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Architectural Design or aesthetic quality thereof and their harmony with the environment. If the aforesaid observations of the Authority or the Independent Expert indicate that the architectural drawings are not in conformity with the Architectural Design or require improvement in aesthetic quality or harmony with the environment, the relevant drawings shall be revised by the Concessionaire and resubmitted to the Authority and the Independent Expert for review. The Authority and/ or the Independent

Expert shall give their observations, if any, within 7 (seven) days of receipt of the revised architectural drawings.

- 12.5.3 The Concessionaire shall not be obliged to await the observations of the Authority on the architectural drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin Construction Works at its own discretion and risk. For the avoidance of doubt, no review and/ or observation of the Authority or the Independent Expert and/ or their failure to review and/ or convey their observations on the architectural drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority or the Independent Expert be liable for the same in any manner.

## **12.6 Construction of the PM MITRA PARK LUCKNOW**

- 12.6.1 On or after the Appointed Date, the Concessionaire shall undertake the Construction Works as specified in Schedule-B and in conformity with the Specifications and Standards set forth in Schedule-D and Good Industry Practice. The 72<sup>nd</sup> (seventy second) months from the Appointed Date shall be the scheduled date for completion of the Project (the “**Scheduled Completion Date**”) and the Concessionaire agrees and undertakes that the Project shall be completed on or before the Scheduled Completion Date. The Concessionaire shall construct, 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.
- 12.6.2 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.
- 12.6.3 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 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Project Milestone is achieved; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in **Schedule-G** shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if **Schedule-G** has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.6.3 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 12.6.3 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof

12.6.4 In the event that the Project is not completed within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.6.5 In the event, the Project are not completed within 180 (one hundred and eighty) days from the construction completion date, unless the delay is on account of reasons attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## **12.7 Extension of Time**

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

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

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

Provided further that notwithstanding anything to the contrary contained in this Agreement, Time Extension shall be due and applicable only for the Project Milestone which are affected by the aforesaid events or Circumstances and shall not in any manner affect the Project Completion Schedule for and in respect of the Project Milestone which are not affected hereunder.

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

12.7.4 The Authority's Representative shall, on receipt of the claim in accordance with the provisions of Clause 12.7.2, examine the claim expeditiously within the time frame specified herein. In the event the Authority's

Representative requires any clarifications to examine the claim, the Authority's Representative shall seek the same within 15 (fifteen) days from the date of receiving such claim. The Concessionaire shall, on receipt of the communication of the Authority's Representative requesting for clarification, furnish the same to the Authority's Representative within 10 (ten) days thereof. The Authority's Representative shall, within a period of 60 (sixty) days from the date of receipt of such clarifications, forward in writing to the Concessionaire its determination of Time Extension.

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

## **12.8 Sub-licensing / Leasing of the Project**

12.8.1 Subject to the provisions of Clause 5.2 and this Article 12, Concessionaire may sub-license / lease part of the Project Assets comprising the Project, such that the period and validity of such sub-license shall not extend beyond the Concession Period.

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

Moreover, sub-licensing / leasing to any foreign person or company shall be subject to prior written consent of the Authority from a national security and public interest perspective.

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

12.8.2 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 12.8.1, the Concessionaire or the sub licensee/lessee shall not assign or in any manner create an Encumbrance on any Project Asset forming part of the Project without prior written approval of the Authority, which approval the Authority may, in its discretion, deny only if such sub-license/lease, assignment or Encumbrance has or may have a Material Adverse Effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 12.8.2 within a period of 90 (ninety) days from the date of receiving a notice with required particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license/lease, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

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

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

## **12.9 Rights of sub-licensees / lessees after Termination of Concession Agreement**

On termination of Concession Agreement, the sub-licensee/lessee (or any occupancy rights by whatever term referred to) will continue their business as usual inside the PM MITRA Park Lucknow and the Authority will fulfill the obligations of the Concessionaire without any claim..

#### **12.10 Compliance with Applicable Laws**

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

#### **12.11 Advertisement on the Site**

- (a) The Concessionaire may undertake or permit to undertake any form of commercial advertising at the Site. All advertising on the Site shall also conform to Good Industry Practice. It is further agreed that the Project shall be known, promoted, displayed, and advertised by the name of the Authority.
- (b) For the avoidance of doubt, it is agreed that the right of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time.
- (c) the Concessionaire shall not put any advertisement nor collect any revenue from the same until it has received Completion Certificate or the Provisional Certificate from the Independent Expert.

#### **12.12 Incomplete Construction**

In the event the Concessionaire fails to complete the Project in accordance with the Project Completion Schedule, including any Time Extension granted under this Agreement, the Concessionaire shall endeavour to complete the balance work expeditiously and shall pay Damages to the Authority in accordance with the provisions of Clause 15.2 for delay of each day until the Project are completed in accordance with the provisions of this Agreement. Recovery of Damages under this Clause shall be without prejudice to the rights of the Authority under this Agreement including the right to Termination under Article 34.

## 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 physical and financial 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 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 Project Completion Schedule, Scope of the Project and Specifications and Standards. The Independent Expert shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Expert shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

### 13.3 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 test shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by the agencies operating in the Industrial Park sector. In the event of non-availability of such tests the list of tests will be provided by the Authority in consultation with the Independent Consultant. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the test in accordance with the instructions of the Independent Expert and furnish the results thereof to the Independent Expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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 and shall also uploaded on the website forthwith.

#### **13.4 Delays during construction**

Without prejudice to the provisions of Clause 12.6.1, if the Concessionaire does not achieve any of the Project Milestones or the Independent Expert shall have reasonably determined that the rate of progress of Construction Works is such that completion of the Project is not likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent 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 on any error or defect of a technical nature in the designs and Drawing without rectification of which the Project cannot be carried out as per this Agreement, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of any equipment, maintenance or any individual on or about the Project. Provided, however, that in case of an emergency, the Authority may *suo moto* issue the notice referred to 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 there upon carry out remedial measures to secure the safety of suspended works and or any individual on or about the Project. The Concessionaire may by notice require the Independent Expert to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. All costs and expenses arising out of or relating to tests and inspections conducted by the Independent Expert to inspect such remedial measures shall be borne by the Concessionaire. Upon receiving the recommendations of the Independent Expert, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 Subject to the provisions of Clause 31.7, 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 dates 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 subject to a maximum of 10% (ten per cent) of the Concession Period.

#### **13.6 Video recording**

During the Construction, the Concessionaire shall have camera at site and shall provide to the Authority and to the Independent Expert weblink for monitoring of the Construction works. Further, for every calendar quarter, a video recording / Drone survey, which will be compiled into a 3 (three) hour digital

video disc or any substitute thereof, 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. The Authority may require such video recording to be carried out along with the authorized representative(s) of the Authority. Notwithstanding anything to the contrary contained in this document, the Concessionaire shall also develop a Project specific portal which shall be accessible to Authority the public and upload the time stamp pictures of the development of the Project each week.

Draft Concession Agreement



## ARTICLE 14 - COMPLETION CERTIFICATE

### 14.1 Tests

- 14.1.1 No later than 60 (sixty) 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 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 of Concessionaire and Independent Expert failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Expert.
- 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 Provisional Certificate

- 14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Expert may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "**Provisional Certificate**") if the Tests are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Expert and the Concessionaire (the "**Punch List**"); provided that Independent Expert shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority.
- 14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if at least 90% (ninety per cent) of the Project has been completed and it can be safely and reliably be placed in commercial operation in accordance with the provisions of Clause 14.3.1. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part of Project.

#### **14.4 Completion of Punch List Items**

- 14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the Independent Expert. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Expert in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1
- 14.4.2 Upon completion of all Punch List items, the Independent Expert shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure, reasons beyond the control of the concessionaire or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.

#### **14.5 Withholding of Provisional or Completion Certificate**

- 14.5.1 If the Independent Expert determines that the Project or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Expert and after conducting its own inspection, if the Authority is of the opinion that the Project is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project and direct the Independent Expert to withhold issuance of the Provisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies at its own cost and thereupon Test shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.
- 14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Expert under that Clause, direct the Independent Expert to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

#### **14.6 Rescheduling of Inspection & Tests**

If the Independent Expert certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstance 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.

#### **14.7 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.

#### **14.8 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 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.

The Project, shall be deemed to be completed when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14. The date on which such a certificate is issued shall be the Completion Date.

Draft Concession Agreement

## ARTICLE 15 - ENTRY INTO COMMERCIAL SERVICE

### 15.1 Commercial Operation Date (COD)

- 15.1.1 The commercial operation date of the Project shall be the Appointed Date (the “COD”). The Project shall enter into commercial service on COD whereupon the Concessionaire, its authorised representatives or the sub-licensees/lessee, under valid and subsisting sub-licensing agreements, shall be entitled to demand and collect Fee in accordance with the provisions of Article 26.

### 15.2 Damages for delay

- 15.2.1 . The Concessionaire hereby agrees and undertakes that itself shall achieve COD within 180 (One Hundred Eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (One Twenty) days , subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (Zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (One Hundred Eighty ) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in COD has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 of due to Force Majeure.
- 15.2.2 The Concessionaire shall, upon occurrence of COD, notify the Authority forthwith.

## ARTICLE 16 - CHANGE OF SCOPE

### 16.1 Change of Scope

- 16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of addition, deletion, and modification of works and Services which are not included in the Scope of the Project as contemplated by this Agreement (the “**Change of Scope**”). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved Services, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with or without modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply *mutatis mutandis* to such works or services.

### 16.2 Procedure for Change of Scope

- 16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated there under (the “**Change of Scope Notice**”).
- 16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence, provide to the Authority such information as is necessary, together with preliminary Documentation in support of:
- (a) the impact, including Material Adverse Effect with reasonable justification and evidence, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and
  - (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work 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 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, in so far 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 30 (thirty) 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. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project

Note: For Clause 16.3.2, the Total Project Cost shall be the Value in INR as set forth by the Authority under Article 45.

### **16.4 Restrictions on certain works**

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to the provisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completion of the Project by the Scheduled Completion Date; provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of the Project and issuing the Provisional Certificate.

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

Note: For Clause 16.4.2, the Total Project Cost shall be the Value in INR as set forth by the Authority under Article 45.

### **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 any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria,

and thereupon securing the award of such works or services. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 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 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.

#### 16.6 Reduction in Scope of the Project

If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax return of the Concessionaire, the Parties shall meet, as soon as reasonably practical, and agree on a full or partial waiver of the aforesaid payment of 80% (eighty per cent) so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no reduction in Scope of the Project. It is further agreed that the liability of the Authority under this Clause 16.6 shall not extend beyond waiver of the aforesaid 80% (eighty per cent). It is also agreed that in the event of a Dispute, the Dispute Resolution Procedure shall apply.

For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein

## **ARTICLE 17 - OPERATION AND MAINTENANCE**

### **17.1 O&M obligation of the Concessionaire**

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project and provide Services to the Users in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvement to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The Concessionaire shall be inter alia at its own cost, expense, and consequences responsible and liable for / to:

- (a) Investigate, study, design, construct as per specifications, operate and maintain the Project in accordance with the provisions of this Agreement, Good Industry Practices and Applicable Laws;
- (b) Obtain all Applicable Permits in conformity with the Applicable Laws and be in compliance thereof at all times during the Concession Period;
- (c) Ensure that services of water supply, sewerage, drainage, electricity, telephone, etc. at the Site or in the vicinity, encountered during the period of construction / operation / maintenance of the Project are not damaged. In case of any shifting of utilities required during construction, the Concessionaire will have to bear the upfront charges of such shifting. All the coordination work with concerned Agencies including the clearances / permissions for shifting of utilities will be the responsibility of the Concessionaire);
- (d) Procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, Agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project;
- (e) Provide all assistance to the Independent Expert/Authority as they may reasonably require for the performance of their duties and services under this Agreement ;
- (f) Provide to the Authority/Independent Expert the reports on a regular basis during the Implementation Period and Operations Period in accordance with the provisions of this Agreement;
- (g) Adhere to the provisions of all laws of the land including municipal laws and bylaws and rules in connection with display of advertisements. The Concessionaire shall also pay / ensure payment of advertisement tax, service tax, other taxes & levies if any, in respect of the advertisements displayed.
- (h) Make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (i) Develop, implement and administer a surveillance and safety program for the Project and the Users thereof including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Applicable Laws and Good Industry Practice;
- (j) Not place or create nor permit any worker or other person claiming through or under the Concessionaire to create or place any Encumbrance over all or any part of the Project Assets, or on any rights of the Concessionaire therein, save and except as expressly set forth in this Agreement;



- (k) Notwithstanding any provision in this Agreement be solely responsible for safety, stability, soundness and durability of the Project including all structures forming part thereof and their compliance with the Specifications and Standards as per Agreement during Construction as well as Operation and Maintenance Period and be liable for any claims arising there from.
- (l) Ensure that the Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (m) Operate and maintain the Project at all times during the Operation Period in conformity with this Agreement including but not limited to the Specifications and Standards, the Maintenance Programme and Good Industry Practice;
- (n) Ensure that Site and facilities created are not defaced by any kind of writings/posters
- (o) Follow all labour laws and regulations and pay the wages, deposit PF& ESI contributions and other dues to its workers in time. Concessionaire shall indemnify the Authority from any claims in this regard and submit certificates with details of PF and ESI deposited for each of its employees (and employees of its contractors for which Authority is likely to be Principal Employer under this Contract) every quarter.
- (p) Intimate the Authority and the Independent Expert about any misconduct or misdeeds or any act or incident involving the Concessionaire or any of its personnel or any of its sub-licensee(s), lessee(s), Contractor(s)/ sub-contractor(s), agent(s), representative(s) in any criminal or civil case and shall not hold the Authority liable for any of the same or consequences thereof in any manner whatsoever.
- (q) Ensure that the Project Assets are handed over to Authority in sound condition on the Transfer Date;
- (r) Minimize disruption in the event of accidents or other incidents affecting the safety and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (s) Prevent with the assistance of concerned law enforcement agencies, any unauthorized use of the Project
- (t) Prevent, with the assistance of the concerned law enforcement agencies, any encroachments on, or unauthorized entry to the Site by any Third Party;
- (u) Protect the environment and provision of equipment and materials thereof;
- (v) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;
- (w) Maintain a public relations unit to interface with and attend to suggestions from the Users, government agencies, media, and other agencies. The Concessionaire may develop and maintain a project website with provisions to integrate with the Authority website, to display information about the facilities available to the users, for receiving and publishing user feedback, and mechanism for grievance redressal. Authority may publish guidelines from time to time related to the website.
- (x) operate and maintain all rail infrastructure (if any) and associated facilities in compliance with the applicable guidelines issued by the Government agency and including amendments if any, as specified in Schedule X.

- (y) permitting safe, smooth, and uninterrupted use by the Users of the Project to avail the Services, including prevention of loss or damage thereto, during normal operating conditions;
  - (z) meet the requirements of Key Performance Indicators and provide a half-yearly status report of compliance with the Key Performance Indicators;
  - (aa) carrying out periodic preventive maintenance of the Project;
  - (bb) taking all measures relating to fire precautions in accordance with Applicable Laws, Applicable Permits and Good Industry Practice;
- 17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, water materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition at all times during the concession period, and in conformity with Applicable Laws, Applicable Permits and Good Industry Practice.

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

- 17.1.3 If the Concessionaire fails to comply with any directions issued by the Authority or any Government Instrumentality acting under any Applicable Laws, as the case may be, and is liable to pay a penalty under the provisions of Applicable Laws, such penalty shall be borne solely by the Concessionaire, and shall not be claimed from the Authority. For the avoidance of doubt, payment of any penalty under the provisions of Applicable Laws shall be in addition to, and independent of the Damages payable under this Agreement.
- 17.1.4 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of roads, over-bridges/ under-bridges, over-passes, under-passes or other structures constructed by the Concessionaire, even if used by general traffic other than PM MITRA PARK LUCKNOW<sup>14</sup>.

## 17.2 Maintenance and Service Requirements

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

## 17.3 Maintenance Manual

- 17.3.1 No later than 180 (one hundred and eighty) days from the Appointed Date, the Concessionaire shall, in consultation with Independent Expert, evolve a repair and maintenance manual (the “**Maintenance Manual**”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Expert. The Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*, to such revision.

---

<sup>14</sup> The above clause shall apply on case to case basis and in accordance to Schedule - B.

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

#### **17.4 Maintenance Programme**

17.4.1 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, Maintenance Manual and Safety Requirements, Such Maintenance Programme shall include;

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

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

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

#### **17.5 Safety, breakdowns and accidents**

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

17.5.2 The Concessionaire’s responsibility for rescue operations on the Project Facility shall include safe evacuation of all Users and 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 and movement of the Users. For this purpose, it shall maintain and operate 2 (two) round-the-clock rescue vehicles with rescue equipment, ambulance and position the vehicles in a manner that allows prompt access to the accident site.

#### **17.6 De-commissioning due to Emergency**

- 17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to users for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.
- 17.6.2 The Concessionaire shall re-commission the Project 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 and shall notify the Authority of same without any delay or as and when instructed by the Authority.
- 17.6.3 Any de-commissioning or closure of any part of the Project and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

#### **17.7 Project closure**

- 17.7.1 The Concessionaire shall not close any part of the Project for undertaking maintenance or repair works not forming part of the Maintenance Programme, except with the prior written approval of the Independent Expert. Such approval shall be sought by the Concessionaire through a written request to be made to the Independent Expert, and a copy thereof furnished to the Authority, at least 7 (seven) days before the proposed closure and shall be accompanied by particulars thereof. Within 3 (three) days of receiving such request, the Independent Expert shall grant permission with such modifications as it may deem reasonable and necessary and a copy of such permission shall be sent to the Authority.

However, it shall be noted that the maximum period for such closure, not forming part of the Maintenance Programme, shall not be more than 7 (seven) days in a year.

For any unforeseen event / major overhaul required due to technical reasons / machinery breakdown., requiring closure of the facility beyond 7 days, Concessionaire shall seek approval of the Authority in writing detailing out the reasons requiring such closure.

However, the Concessionaire may seek further extension to the above project closure period from the Authority on grounds of operations, management, unforeseen event and major overhaul beyond the original period approved under this Clause arising out of exceptional or extraordinary circumstances. The Authority shall provide its decision within 7 (seven) days of such request. For avoidance of doubt, the Authority shall respond with 7 (seven) days of receiving a request from the Concessionaire and if the Authority does not respond within the said period, the request of the Concessionaire shall be deemed to be approved.

- 17.7.2 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated part of the Project for the period specified therein, and in the event of any delay in re-opening such part, the Concessionaire shall pay Damages to the Authority calculated at the rate of 1.25 (one point two five) times the daily Revenue Share payable to the Authority from designated part of the Project, as determined by the Independent Expert, for each day of delay until that part of the Project has been re-

opened for use. The payment of Damages shall not affect its obligations of payment of Revenue Share / Minimum Guaranteed Revenue Share as provided under this Agreement.

Explanation: For the purpose of calculating daily revenue, the average of monthly revenue of preceding month shall be used.

### **17.8 Damages for breach of maintenance obligations**

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured at 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.

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

### **17.9 Authority's right to take remedial measures**

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

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to the Authority the right to recover the costs and Damages specified in Clause 17.9.1 directly from the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow bank to make payment from the Escrow Account in accordance with the instruction of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

### **17.10 Overriding powers of the Authority**

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

17.10.2 In the event of the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 31.3, 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 PM MITRA PARK LUCKNOW and rail connectivity or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 31. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

#### **17.11 Restoration of loss or damage to the Project**

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.

#### **17.12 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 Specifications and Standards, Maintenance Requirement, Good Industry Practice and Applicable Laws; 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. For the avoidance of doubt, all modifications made hereunder shall comply with the Safety Requirement, Specifications and Standards, Applicable Laws, Good Industry Practice and the provisions of this Agreement.

#### **17.13 Excuse from performance of obligations**

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

- (a) an event of Force Majeure;

- (b) measures taken to ensure the safe use of the PM MITRA PARK LUCKNOW except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or
- (c) Compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the PM MITRA PARK LUCKNOW:

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the PM MITRA PARK LUCKNOW open to users provided they can be operated safely.

#### **17.14 Advertising on the Site**

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

#### **17.15 Surveillance of Common User Operations Area**

During the operations period, the Concessionaire shall provide access to surveillance cameras of common user operations area to Authority, in accordance with the Surveillance and Safety Manual, applicable laws and Good Industry Practice. The access to the surveillance cameras shall be provided to the Authority within 1 (one) month of the COD.

#### **17.16 Monitoring and Maintenance**

- a) With reference to the stipulations of Clause 17.4.1, the Concessionaire shall undertake the maintenance of the Project.
- 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. inter alia in relation to the Services provided and Users 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;
- 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.
- e) The Concessionaire shall provide all relevant information and data on Key Performance Indicators on a half yearly basis as detailed under Article 23 of this Agreement.

#### **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.

Any maintenance, repair, or rectification of the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW under the provisions of Clause 17.6 shall be deemed to be Unscheduled Maintenance.

Draft Concession Agreement



## ARTICLE 18 - SAFETY REQUIREMENTS

### 18.1 Safety Requirements

- 18.1.1 The Concessionaire shall comply with provisions of this Agreement, Applicable Laws and Applicable permits and conform to Good Industry Practice for securing the safety of the Users and other persons present at the PM MITRA PARK LUCKNOW. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the PM MITRA PARK LUCKNOW, and shall comply with the safety requirements set forth in Schedule-L (the “**Safety Requirements**”).
- 18.1.2 The Authority if need be, shall appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) for carrying out safety audit of the Project in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

## ARTICLE 19 - MONITORING OF OPERATION AND MAINTENANCE

### 19.1 Monthly status reports

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 PM MITRA PARK LUCKNOW including its compliance or otherwise with the 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.

During the Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly management report to the Authority which shall include a summary of:

- (a) key performance indicators achieved in the month, along with an analysis of reasons for failures, if any, and proposals to remedy the same;
- (b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project's operational performance; and
- (c) key financial parameters for the month i.e. monthly revenue statement in the form set forth in Schedule O and as benchmarked against the monthly budget and the reasons for shortfall, if any, and proposals to remedy the same.

### 19.2 Quarterly status reports

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

### 19.3 Inspection

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

### 19.4 Tests

For determining that the Project conforms to the Maintenance Requirements, the Independent Expert shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Expert and furnish the results of such

tests forthwith to the Independent expert. One half of the costs incurred on such tests, and to the extent certified by the Independent Expert as reasonable, shall be reimbursed by the Authority to the Concessionaire.

## **19.5 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 Schedule I 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 PM MITRA PARK LUCKNOW into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.5 shall be repeated until the PM MITRA PARK LUCKNOW conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8

## **19.6 Reports of unusual occurrence**

- 19.6.1 The Concessionaire shall, prior to the close of each week or on the day of the occurrence of an accident/untoward incident, send to the Authority and the Independent Expert, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project relating to the safety and security of the Users and the Project. A monthly summary of such reports shall also be sent with-in 3 (three) days of closing of each month, as the case may be. For the purposes of this Article 19, accidents and unusual occurrences on the Site shall include:
- a. death or injury to any person;
  - b. damaged or dislodged fixed equipment;
  - c. any damage or obstruction on the Project, which results in slow down of the services being provided by the Concessionaire;
  - d. any damage or obstruction to the Users or the property of the Users;
  - e. disablement of any equipment during operation;
  - f. communication failure affecting the operation of the Project;
  - g. smoke, fire, theft, trespass, or other breach of security of the Project;
  - h. flooding of the Project; and
  - i. such other relevant information as may be required by the Authority or the Independent Expert.

Provided, however, that in the event no report is sent prior to the close of any day as required hereunder, it shall be presumed that no accident or unusual occurrence, as specified in this Clause 19.6.1, has occurred on that day.

19.6.2 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.

Draft Concession Agreement

## ARTICLE 20 - SECURITY

### 20.1 Security

- 20.1.1 Without prejudice to the obligations of the Concessionaire to obtain insurance for the PM MITRA PARK LUCKNOW in accordance with the provisions of this Agreement, the Concessionaire acknowledges and agrees that unless otherwise specified in this Agreement, it shall, at its own cost and expense, procure or cause to be procured security of the PM MITRA PARK LUCKNOW for the prevention of terrorism, hijacking, sabotage, major accident and/or similar acts or occurrences in such manner and to such extent as it may reasonably determine.
- 20.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the PM MITRA PARK LUCKNOW and shall be responsible for the security arrangements for the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW. 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 PM MITRA PARK LUCKNOW, without unduly or unreasonably disrupting the operations of the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW.
- 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. Cost of providing such services by security forces is to be borne by the Concessionaire.
- 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 access to the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW 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 of the risk perception to the Project, the Concessionaire shall accordingly adjust the insurance cover to factor in the enhanced security risk.

## ARTICLE 21 - CHANGE IN SPECIFICATION AND TEHNOLOGICAL 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 PM MITRA PARK LUCKNOW (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 PM MITRA PARK LUCKNOW, 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 Fee, in respect of the Services provided by the Concessionaire or by any of its authorised representatives acting on its behalf, shall be modified in accordance with the principles of Change in Law under and in accordance with the provisions of Article 40.

### 21.3 Technology upgradation

21.3.1 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 PM MITRA PARK LUCKNOW for rendering the 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 60 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 24 (twenty-four) 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.

21.3.2 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 Services or the cost of performing the Services (a “**Replacement**”), the Concessionaire shall submit either on its own initiative or within 30 (thirty) 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 22 - INDEPENDENT EXPERT**

### **22.1 Appointment of Independent Expert**

The Authority shall appoint a consulting firm 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 the Agreement and shall be for a period of 5 (five) years extendable for another 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm from a fresh panel constituted pursuant to Schedule-M to be the Independent expert for a term of 5 (five) years, 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 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.

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

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

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

### **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 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 as set out under Clause 41.1.

#### **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 authorize any person to discharge the functions of the Independent Expert in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Expert, and such functions shall be discharged as and when an Independent Expert is appointed in accordance with the provisions of this Agreement. Provided, however, that nothing contained in this Clause 22.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.



**Part IV**  
**Financial Covenants**

Draft Concession Agreement

## ARTICLE 23 - FINANCIAL CLOSE

### 23.1 Financial Close

- 23.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 120 (one hundred and twenty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Authority in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 23.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

### 23.2 Termination due to failure to achieve Financial Close

- 23.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 31.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 23.2.1 shall not apply.
- 23.2.2 Upon Termination under Clause 23.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if the Financial Close has not occurred solely as a result of Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Bid Security.

## ARTICLE 24 – GRANT

### 24.1 Grant

- 24.1.1 The Authority agrees to provide to the Concessionaire cash support by way of an outright grant equal to the sum of Rs. 500,00,00,000/- (Rupees Five Hundred Crore Only), in accordance with the provisions of this Article 24 (the “Grant”).
- 24.1.2 The Grant shall be disbursed to the Concessionaire by way of Equity Support in accordance with the provisions of Clause 24.2.

### 24.2 Equity Support

- 24.2.1 Subject to the conditions specified in this Clause 24.2, the Grant shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost (the “Equity Support”).
- 24.2.2 60% of the Equity Support shall be due and payable to the Concessionaire after it has expended the Equity, and shall be disbursed proportionately along with the loan funds to be disbursed by the Senior Lenders under the Financing Agreements.

The remaining 40% of the Equity Support shall be triggered once land occupancy by construction of minimum 60% of planned development in industry/processing area and one of following conditions are simultaneously met:

- (i) Cumulative investments of Rs. 1000 Crore made at the PM MITRA Park LUCKNOW;
- (ii) Cumulative annual employment of 25000 people generated at PM MITRA Park LUCKNOW

and shall be disbursed proportionately along with the loan funds to be disbursed by the Senior Lenders under the Financing Agreements.

Authority shall disburse each tranche of the Equity Support as and when due, but not later than 15 (fifteen) days of receiving a request from the Concessionaire along with necessary particulars. Provided further, within 30 (thirty) days of Lenders Representative certifying the final drawdown of the last instalment of the debt, all the balance Equity Support shall be disbursed by the Authority.

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

## ARTICLE 25 - CONCESSION FEE

### 25.1 Concession Fee

25.1.1 In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee, a sum of Re. 1 (Rupee one) per annum and the Revenue Share specified in Clause 25.2, payable in 4 (four) quarters per annum, both collectively referred to as the “**Concession Fee**”. However, the above Concession Fee shall be equal to or more than the Minimum Guaranteed Revenue Share as stipulated in Article 25.4.

### 25.2 Revenue Share

25.2.1 Without prejudice to the provisions of Clause 25.1, the Concessionaire agrees to pay to the Authority after declaration of the COD, a revenue share<sup>15</sup> (the “**Revenue Share**”) in the manner detailed below:

- (a) From the calendar month falling immediately after the COD, the Revenue Share at the rate of [N<sup>16</sup>] % of the Gross Revenue shall become payable during the remaining Concession Period in terms of this Agreement.

In case the COD falls between the quarters<sup>17</sup> of the relevant Accounting Year, Revenue Share shall be computed on the Gross Revenue for the subsequent months in the quarter in which the COD falls.

For avoidance of doubt, in case the COD falls on 17<sup>th</sup> (seventeenth) October, the Revenue Share for the 1<sup>st</sup> (first) quarter shall be payable on the Gross Revenue for the months of November and December.

- (b) During the last Accounting Year of the Concession Period, the Revenue Share shall not be due and payable for the period after expiry of the Concession Period. The last quarterly payment for the last Accounting Year of the Concession Period shall be payable by the Concessionaire based on actual Gross Revenue accrued during the 1<sup>st</sup> (first) day of the relevant quarter till the date of the end of Concession Period in that quarter.

25.2.2 The Revenue Share payable under this Clause 25.2 read with Clause 25.4, shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

### 25.3 Payment of Concession Fee

The Concession Fee payable under the provisions of this Article 25 shall be due and payable in 4 (four) quarterly instalments per annum. For the Revenue Share payable in accordance with Clause 25.2, within 7 (seven) days of close of each quarter, the Concessionaire shall pay to the Authority, a provisional amount calculated on the basis of total Gross Revenue of the immediately preceding quarter, and final settlement thereof, based on audited accounts of the Concessionaire, shall be made within 120 (one hundred and twenty) days of completion of the respective Accounting Year except for the last Accounting Year of the Concession Period. The quarterly payment, or part thereof as the case may be, of the last Accounting Year of the Concession Period shall be payable by the Concessionaire based on actual Gross Revenue received

---

<sup>15</sup> Revenue Share may be quoted up to two decimal places.

<sup>16</sup> N is the % share of Gross Revenue applicable from month falling immediately after the COD

<sup>17</sup> The term quarter used in this Agreement, unless repugnant to the context, shall mean the calendar quarter of the relevant Accounting Year

during the particular quarter(s), or part thereof, within 7 (seven) days of the close of such quarter or part thereof.

In the event the Revenue Share is not paid within the period specified above from the close of each quarter, the amount of outstanding Revenue Share for the relevant quarter shall attract delayed interest payment at the rate of 9% to be computed on the outstanding Revenue Share amount from the end of the 7 (seven) days period till the date of actual payment subject to a maximum period of 60 (sixty) days after the expiry of the initial 7 (seven) days period mentioned above.

In the event the Concessionaire fails to pay the outstanding Revenue Share payment for the relevant quarter together with the delayed interest payment on or before the expiry of the 60 (sixty) days period, the same shall constitute a Concessionaire's event of default.

#### 25.4 Minimum Guaranteed Revenue Share

- (a) The Minimum Guaranteed Revenue Share payable by the Concessionaire against respective Check Point(s) to the Authority shall be as per Schedule Q of this Agreement.
- (b) The sum of the 'present value on "XNPV" basis' of the Revenue Share, payable to the Authority during the Concession Period, as per Clause 25.2 and 25.3, up to the periodic Check Point(s) shall be greater than or equal to the minimum guaranteed Revenue Share ("**Minimum Guaranteed Revenue Share**")<sup>18</sup> as detailed in Schedule Q of this Agreement.

Note: For determining the sum of the 'present value on "XNPV" basis' of Revenue Share paid by the Concessionaire to the Authority up to the respective Check Point(s) detailed in Schedule Q of this Agreement, the actual quantum of Revenue Share paid by the Concessionaire for each period, as per Clause 25.2 and 25.3, up to the respective Check Point(s), shall be discounted at the annual rate of [(9)%] for the number of quarters from the date of payment to the Appointed Date and summed arithmetically thereafter.

- (c) If the sum of 'present value on "XNPV" basis' of the Revenue Share, payable to the Authority during the Concession Period, as per Clause 25.2 and 25.3, up to the periodic Check Point(s) (as detailed in Schedule Q) is less than the 'Minimum Guaranteed Revenue Share', then the difference between the Minimum Guaranteed Revenue Share for the respective Check Point(s) as detailed in Schedule Q and the sum of present value on "XNPV" basis of the Revenue Share paid by the Concessionaire up to the respective Check Point(s) shall be the 'present value on "XNPV" basis' of the shortfall amount at the Appointed Date.

For the purpose of the payment of shortfall amount by the Concessionaire to the Authority, the 'present value on "XNPV" basis' of the shortfall amount, as determined in this Sub-clause above, shall be compounded at the rate of [(...)%] annual rate for the number of quarters, counted from the Appointed Date till the date of the respective Check Point at which the shortfall was determined.

- (d) In case of a shortfall, as determined above in Sub-clause (c), at any given Check Point as specified in Schedule Q, the Concessionaire shall be entitled to a Cure period of [120 (one hundred and twenty)] days from the period as specified in Schedule – Q for the respective Check Point(s) to pay the shortfall amount as determined in Sub-clause (c) above.
- (e) In case the Concessionaire is unable to pay the shortfall amount, referred in Sub-clause (c) above, fully within the Cure Period, Damages at the rate of [0.1% (zero point one per cent)] of shortfall amount, determined in Sub-clause (c) above, shall be applicable for each day of delay, after the Cure Period, subject

---

<sup>18</sup> Minimum Guaranteed Revenue Share shall be the bidding Parameter

to a maximum delay of [90 (ninety)] days, post which the Concessionaire shall be deemed to be in material breach of the Concession Agreement and further action shall be taken as per the provisions of this Agreement.

- (f) For avoidance of doubt, it is clarified that if the sum of present value on “XNPV” basis of Revenue Share payable to the Authority in terms of Clause 25.2 and 25.3 exceeds the Minimum Guaranteed Revenue Share, calculated as per stipulation of this Clause 25.4 and Schedule Q, the excess amount shall be the revenue to the Authority as a part of consideration to concession over and above Minimum Guaranteed Revenue Share.

However, for the sake of clarity it is understood that any deficit payment against Minimum Guaranteed Revenue Share or surplus payment over Minimum Guaranteed Revenue Share at the respective Check Point(s) (as detailed in Schedule-Q) will be taken into account for the purpose of Minimum Guaranteed Revenue Share at subsequent Check Point (s).

## **25.5 Verification of Gross Revenue**

- 25.5.1 The Authority may, in order to satisfy itself that the Concessionaire is reporting its Gross Revenue honestly and faithfully, depute its representatives to the PM MITRA PARK LUCKNOW, centralised controls of automatic revenue collection system and the offices of the Concessionaire/its representative / sublicensee/lessee and undertake such other measures and actions as it may deem necessary, to ascertain the actual revenue.
- 25.5.2 If the verification of Gross Revenue pursuant to this Clause 25.5 demonstrates that the Gross Revenue is more than the amount reported by the Concessionaire or its sub-licensees / lessees, the Concessionaire shall pay Damages, to the Authority, at the rate equal to 50 (fifty) times the difference in daily Gross Revenue determined by the Authority or its representative.

## ARTICLE 26 - USER FEE

### 26.1 Collection of Fee by the Concessionaire

- 26.1.1 On and from COD, and till the Transfer Date, the Concessionaire, or its authorised representatives or the sub-licensees/lessee (under valid and subsisting sub-license/lease agreement's) shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users as per the tripartite agreement signed which is provided in Schedule-P. The schedule of fees to comply with guidelines and provisions specified in Schedule-P (the "**Schedule of Fee**").
- 26.1.2 The Concessionaire acknowledges and agrees that upon payment of Fee in terms of this Article 26, any User shall be entitled to use the specified facility at the PM MITRA PARK LUCKNOW, and the Concessionaire shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Laws, Applicable Permits or the provisions of this Agreement unless specified in Schedule P.

### 26.2 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 15 (fifteen) days of completion of each month, a statement of Fee in respect of the Services, facilities and amenities rendered by the Concessionaire or its authorised representatives or the sub-licensees/lessee (under valid and subsisting sub-license/lease agreement's) at the PM MITRA PARK LUCKNOW substantially in the form set forth in **Schedule-O** (the "**Monthly Fee Statement**"). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require, at specified intervals, in discharge of its statutory functions.

### 26.3 Fee contractor

The Concessionaire may appoint a fee contractor or any other person to collect the Fee for and on behalf of the Concessionaire in respect of the Services, facilities and amenities rendered by the Concessionaire, or its authorised representatives or the sub-licensees/lessee (under valid and subsisting sub-license/lease agreement's) at the PM MITRA PARK LUCKNOW; provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

## ARTICLE 27 - COMMISSIONING OF COMPETING FACILITY

### 27.1 Restrictions on commissioning of Competing Facility

- 27.1.1 Notwithstanding anything to the contrary contained in this Agreement but subject always to Clause 27.2, the Authority shall not construct and shall procure that no Government Instrumentality shall construct or cause to be constructed any new Competing Facility within a distance of a [50 (fifty) kilometres]<sup>19</sup> radius of the PM MITRA PARK LUCKNOW until [20 (twenty)] years from the Appointed date (“**Exclusivity Period**”); provided that the restriction herein shall not apply if the Average occupancy of the industrial units as defined in the Master Plan in any 5 (five) consecutive years exceeds 90% (ninety per cent) of its designed capacity.
- 27.1.2 If the Authority shall be in breach of the provisions of Clause 27.1.1, the Concessionaire shall be entitled to remedies specified in Clause 27.2 only.

### 27.2 Modification in the Concession Period

In the event of the Authority commissioning or operating, or causing the commissioning or operation of any Competing Facility within [25 (twenty five) kilometres]<sup>20</sup> at any time until the 5<sup>th</sup> (fifth) anniversary of the Appointed Date, the following shall apply:

- (a) The Authority shall be liable to compensate to the Concessionaire the loss by extending the Concession Period by the proportion that can be mitigated by such extension. However, such extension shall not exceed more than 10% (ten per cent) of the Concession Period and such compensation shall be the sole remedy of the Concessionaire
- (b) If the Concession Period is to be increased in accordance with the provisions of this Clause 27.2, the same shall be added to the Concession Period under and in accordance with all other provisions of this Agreement, save and except the provisions relating to Termination.

---

<sup>19</sup> The distance shall be finalized on project-to-project basis with approval from the competent authority.

<sup>20</sup> The distance shall be finalized on project-to-project basis with approval from the competent authority.



## ARTICLE 28 - ESCROW ACCOUNT

### 28.1 Escrow Account

- 28.1.1 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.
- 28.1.2 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-R.

### 28.2 Escrow Account Leasing

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of this Clause, until the completion of the construction work as defined in this Agreement, the all monies in relation to sub-license / lease shall be deposited in a separate Escrow Account ("Escrow Account Leasing").

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

### 28.3 Deposits into Escrow Account

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

- (a) all funds constituting the Financial Package
- (b) all Fee and any other revenues from or in respect of the Project, including the proceeds of any capital receipts, revenue receipts, O&M charges, Advertisement charges, damages or insurance claims; and
- (c) all monies in relation to sub-license / lease received in the Escrow Account Leasing as per Clause 28.6.
- (d) all payment by the Authority, (after deduction of any outstanding Concession Fee):

### 28.4 Deposits into Escrow Account Leasing

The Concessionaire agrees and undertakes that it shall receive / deposit into and/or credit all monies by whatever name called received in relation to sub-license / lease in to Escrow Account Leasing.

### 28.5 Transfer of funds from Escrow Account Leasing to Escrow Account

The Concessionaire shall agree that all receipts / deposit into and/or credit all monies received in relation to sub-license / lease in to Escrow Account Leasing shall be transferred from Escrow Account Leasing to the Escrow Account in following manner:

- (i) Up to 10% (Ten percent) of Total Project Cost shall be automatically transferred to the Escrow Account and shall be utilised in terms of this Agreement.
- (ii) A monthly payment shall be transferred to the Escrow Account and shall be utilised in terms of this Agreement subject to submission of monthly progress reports by the Independent Engineer and

approval of the Authority. The monthly transfer amount, in any case, shall not exceed the equity contribution made by the Concessionaire to incur the capital expenditure.

- (iii) Upon completion of construction works, all balance amounts in the Escrow Account Leasing shall automatically be transferred to the Escrow Account and will be utilised in accordance with the terms of this Agreement.

## **28.6 Withdrawals during Concession Period**

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

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) all payments relating to constructions of the Project in accordance with the terms of the Concession Agreement, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- (c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
- (d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;
- (e) Revenue Share/MGR due and payable to the Authority;
- (f) monthly proportionate provision of Debt Service due in an Accounting Year;
- (g) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire, Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.
- (h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- (i) Any reserve requirements set forth in the Financing Agreements; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

28.6.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 28.6.1, except with the prior written approval of the Authority.

28.6.3 The Concessionaire shall not transfer any fund from Escrow Account Leasing to Escrow Account, except prior written approval from the Authority.

## **28.7 Withdrawals upon Termination**

- 28.7.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
- (a) All taxes due and payable by the Concessionaire for and in respect of the Project;
  - (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
  - (c) Outstanding Concession Fee and other payments
  - (d) All payments and Damages certified by the Authority as due and payable to it by the Concessionaire,; the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.
  - (e) Retention and payments relating to the liability for defects and deficiencies set forth in Article 36;
  - (f) Outstanding Debt Service including the balance of Debt Due;
  - (g) Outstanding Subordinated Debt;
  - (h) Incurred or accrued O&M Expenses;
  - (i) any other payments required to be made under this Agreement; and
  - (j) balance, if any, in accordance with the instructions of the Concessionaire

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 28.7.1 until a Vesting Certificate has been issued by the Authority under the provisions of Article 35.

- 28.7.2 The provisions of this Article 28 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 28.7.1 have been discharged.

## **ARTICLE 29 - INSURANCE**

### **29.1 Insurance during Concession Period**

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

### **29.2 Notice to the Authority**

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 29. 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.

### **29.3 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 29 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarized true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

### **29.4 Remedy for failure to insure**

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

### **29.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 29 shall include a waiver of any and all rights of subrogation or recovery of the insurers there under 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.

#### **29.6 Concessionaire's waiver**

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

#### **29.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 28.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the PM MITRA PARK LUCKNOW, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **29.8 Insurance Cover**

Without prejudice to the provisions contained in Clause 29.1, the Concessionaire shall, during the Operation Period, procure and maintain Insurance Cover including but not limited to the following:

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

#### **29.9 Compliance with conditions of insurance policies**

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

## ARTICLE 30 - ACCOUNTS AND AUDIT

### 30.1 Audited Accounts

- 30.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all revenues recovered, Gross Revenue including Realisable Fee, and all incomes derived/collected by it from or on account of the PM MITRA PARK LUCKNOW and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement, Profit and loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours 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.
- 30.1.2 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.
- 30.1.3 On or before the 31<sup>st</sup> (thirty-first) day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on revenues derived from the Project, and such other information as the Authority may reasonably require.

### 30.2 Appointment of Auditors

- 30.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the “**Panel of Chartered Accountants**”), such list to be prepared substantially in accordance with the criteria set forth in Schedule-S. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 30.2.2 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.
- 30.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “**Additional Auditors**”) from the Panel of Chartered Accountants as may be decided by the Authority to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

30.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Concession Period, another firm (the “**Concurrent Auditors**”) as may be decided by the Authority to undertake concurrent audit of the Concessionaire’s accounts.

### **30.3 Certification of claims by Statutory Auditors**

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

### **30.4 Set-off**

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

### **30.5 Dispute Resolution**

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure as set out under Clause 41.1.

**Part V**  
**Force Majeure and Termination**

Draft Concession Agreement



## ARTICLE 31 - FORCE MAJEURE

### 31.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall, save and except as expressly provided otherwise, mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 31.2, 31.3 and 31.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

### 31.2 Non-Political Event

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

- (a) act of God, epidemic, pandemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the PM MITRA PARK LUCKNOW 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 31.3;
- (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 judgement or order of any court of competent jurisdiction or statutory Authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

### 31.3 Indirect Political Event

An Indirect Political Events 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, rebellion, revolution, insurrection, terrorist or military action, usurped power, civil commotion or politically motivated sabotage;

- (b) Industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) Any civil commotion, boycott or political agitation which prevents operations by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) Any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor,
- (e) Any Indirect Political Event that causes a Non-Political Event,
- (f) Any event or circumstance of a nature analogous to any of the foregoing, or
- (g) 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.

#### **31.4 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 consequence thereof cannot be dealt with under and in accordance with the provision of Article 40 and its effect, in financial terms, exceeds the sum specified in Clause 40.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, 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, authorization, 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.

#### **31.5 Duty to report Force majeure Events**

- 31.5.1 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 31 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effects which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Events; and
- (d) any other information relevant to the Affected Party's claim.

31.5.2 The Affected party shall not be entitled to any relief for or in respect of a Force majeure Events unless it shall have notified the other party of the occurrence of the Force Majeure Events as soon as reasonably practicable, and in any events no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

31.5.3 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 31.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

### **31.6 Effect of Force Majeure Event on the Concession**

31.6.1 Upon the occurrence of any Force Majeure Events prior to the Appointed Date, the period set forth for fulfilment of Conditions Precedent in Clause 4.1.3 and in Clause 23.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

31.6.2 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 Events subsists; or
- (b) after COD, whereupon the Concessionaire is unable to perform the Services and consequently collect the Fees despite making best efforts or it is directed by the Authority to suspend the Services and for collection of Fee 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 Services and collecting the Fee on account thereof; provided that in the event of reduction in Fee on account of partial inability or suspension of Services, as the case may be, which causes the daily collection of Fee to decline below 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily average basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for 4 (four) days shall entitle the Concessionaire to extension of 1(one) day in the Concession Period. However, the maximum extension in the Concession Period, shall be limited only up to 10% (ten per cent) of the Concession Period.

### **31.7 Allocation of costs arising out of Force Majeure**

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

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

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Events, shall be borne by the Concessionaire, and to the extent Force Majeure Cost 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, upon occurrence of a Force Majeure event after the Appointed Date till achievement of COD, Force Majeure Costs may include interest payments on debt Due Force and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and such Force Majeure Costs shall be determined as under:

- (i) escalation on value of incomplete work to be determined on the basis of variation in WPI from the initial date set forth for the Scheduled [Four-Laning] Date in Schedule G till achievement of COD, proportionately for the period of delay attributable to the Force Majeure Event;
- (ii) prolongation costs equal to 8% of value of incomplete work multiplied by the period of delay attributable to the Force Majeure Event divided by the period specified in Clause 12.4.1;
- (iii) interest on Debt Due for the period of delay attributable to the Force Majeure Event;
- (iv) Cost of maintenance of existing road as determined from original Financing Agreements for the period of delay attributable to the Force Majeure Event.

For the avoidance of doubt, the incomplete work shall mean the incomplete work attributable only to the Force Majeure Event. The value of such work shall be assessed as on the Bid Due Date by Independent Engineer as per the methodology provided in Clause 16.2.2 (c).

Provided, upon occurrence of a Force Majeure Event after the COD till Transfer Date, Force Majeure Costs may include (a) interest on Debt Due and (b) O&M expenses as determined from original Financing Agreements.

31.7.3 Save and except as expressly provided in this Article 31, 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.

### **31.8 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 31, 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.

### **31.9 Termination Payment for Force Majeure Event**

31.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clauses 34.3.1 as if it were a Concessionaire Default.

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

- (a) 100% (one hundred per cent) of Debt Due; less any insurance proceeds and
- (b) 110% (one hundred and ten percent) of the Adjusted Equity

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

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

31.9.3 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 34.3.2 as if it were an Authority Default.

### **31.10 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 as set out under Clause 41.1, provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

### **31.11 Excuse from performance of obligations**

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

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

## **ARTICLE 32 - COMPENSATION FOR BREACH OF AGREEMENT**

### **32.1 Compensation for default by the Concessionaire**

Subject to the provisions of Clause 32.4, in the event of the Concessionaire being in material breach or default of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material breach or default, within [30 (thirty)] days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 32.1 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.

### **32.2 Compensation for default by the Authority**

Subject to the provisions of Clause 32.4, in the event of the Authority, being in material breach or default of this Agreement at any time after the Appointed Date, shall compensate the Concessionaire for the loss suffered by extending the Concession Period in the proportion that can be mitigate the loss suffered by such extension. However, any such extension of the Concession Period shall not exceed more than 10% (ten per cent) of the Concession Period and such extension shall be the sole remedy of the Concessionaire and no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement.

### **32.3 Compensation to be in addition**

Compensation payable under this Article 32 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

### **32.4 Mitigation of costs and damage**

The Party not in breach shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## ARTICLE 33 - SUSPENSION OF CONCESSIONAIRE'S RIGHTS

### 33.1 Suspension upon Concessionaire Default

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

### 33.2 Authority to act on behalf of Concessionaire

33.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, provide the Services and operate the PM MITRA PARK LUCKNOW and collect all Fee and revenue under and in accordance with this Agreement, and the Fee shall be deposited in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the O&M Expenses and for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 28.3.

33.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby sub-licenses respectively, the Authority or any other person authorized by it under Clause 33.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Facility and its designs, engineering (as required for proper execution and completion of the Project as envisaged by the Authority), construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

### 33.3 Revocation of Suspension

33.3.1 In the event that the Authority, acting in accordance with the provisions of Article 33, shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

### **33.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice there under 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 33.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

### **33.5 Termination**

- 33.5.1 At any time during the period of Suspension under this Article 33, 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 33.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 34.
- 33.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 33.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis, mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.



## ARTICLE 34 - TERMINATION

### 34.1 Termination for Concessionaire Default

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

- (a) The Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) Subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for [120 (one hundred and twenty)] days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) COD does not occur within the period specified in Clause 12.6.4;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (i) an Escrow Default has occurred and the Concessionaire fails to cure the default within a Cure Period of 15 (fifteen) days;
- (j) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (l) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (n) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;

- (o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;
- (p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court(including tribunal) of competent jurisdiction in accordance with the provisions of Insolvency and Bankruptcy Code, 2016 or Companies Act, 2013 and a liquidator (including provisional liquidator) or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by a court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
  - a. the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - b. the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
  - c. each of the Project Agreements remains in full force and effect;
- (t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; OR
- (w) the Concessionaire commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the Authority.
- (x) the Concessionaire fails in achieving the rate of progress as per revised schedule in accordance with Clause 13.4 of this Agreement

34.1.2 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 34.1.3.

- 34.1.3 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 34.1.2 to inform the Lenders' Representative and grant [30 (thirty)] 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.

## **34.2 Termination for Authority Default**

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

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;
- (c) 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; or
- (d) the State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority.

- 34.2.2 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 [30 (thirty)] days to the Authority to make a representation, and may after the expiry of such [30 (thirty)] days, whether or not it is in receipt of such representation, issue the Termination Notice.

### **34.3 Termination Payment**

34.3.1 Upon Termination on account of a **Concessionaire Default** during the Operation Period, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to Schedule Completion Date.

34.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

- (a) Debt Due; and
- (b) 150% (one hundred and fifty per cent) of the Adjusted Equity. Provided that the Termination Payment shall not be less than an amount equal to the product of 6 (six) and the average monthly Fee actually realised 12 (twelve) months prior to the Transfer Date.

34.3.4 Termination Payment shall become due and payable to the Concessionaire within [30 (thirty)] days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to [3% (three per cent)] above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed [90 (ninety)] days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

34.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 34 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.

### **34.4 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the PM MITRA PARK LUCKNOW forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 35.1; and

- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums and the Concessionaire shall keep the Authority and its officers protected and indemnified against any such claim or action by any third party in terms of Article 39 hereof. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

### **34.5 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 34.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments, Divestment Requirements, and Indemnity shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

### **34.6 Limitation of Liability**

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

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 34.3, 34.7, and 34.8 of this Agreement, shall not exceed [100% (one hundred percent)] of the Total Project Cost. Provided however, the aggregate liability of the Authority under Clause 34.3 of this Agreement, shall not exceed one hundred fifteen percent (115%) of the Total Project Cost.

### **34.7 Mutual Foreclosure**

- 34.7.1 Without prejudice to any provision of this Agreement, the Authority and Concessionaire may terminate this Agreement by mutual consent in circumstances which does not constitute Authority's Default, Concessionaire's Default or Force Majeure. Such a foreclosure can occur in any of the following 2 possible position as per the mutual consent of the Authority and the Concessionaire:

- a. Type A Foreclosure: Foreclosure with mutual consent *without any liability or consequential future liability* for either Party.
- b. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements / claims as per the provisions under Clause 34.8.2.

- 34.7.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Party shall issue a Notice to the other Party and upon issuance of such Notice, the other Party may within a reasonable time-

frame either agree to such foreclosure or raise objection(s) to the same by intimating either of the two possible positions to the intending Party in writing.

- 34.7.3 In either case of the other Party agreeing to the proposed termination and with prior written approval of the Lender's Representative or otherwise, the Parties may negotiate the terms and conditions of the mutual foreclosure agreement and this Agreement shall stand terminated upon execution of mutual foreclosure agreement.
- 34.7.4 In the event the Parties mutually agree to terminate this Agreement under this Clause, the Authority shall be liable to compensate the Concessionaire as per the provisions under Clause 34.7.3
- 34.7.5 Any attempt or endeavour for foreclosure by mutual agreement under this Clause shall, subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed that all the rights, claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement hereunder.
- 34.7.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.
- 34.8** Upon Termination on account of Concessionaire Default occurring prior to Schedule Completion Date, no Termination Payment shall be due and payable if Physical Progress is less than 40% (forty per cent), and in the event of Physical Progress exceeding 40% (forty per cent), the provisions of Clause 34.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding 40% (forty per cent) of Total Project Cost. For the avoidance of doubt and by way of illustration, the Parties agree that if the total expenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shall be 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 34.9, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total Project Cost in Clause 48.1. The Parties also agree that for determining the Termination Payment under this Clause 34.9, the expenditure comprising the latest Payment Milestone shall also be reckoned.

#### **34.9 Continuity upon Termination**

In case of Termination under Article 34 and notwithstanding pendency of any judicial/quasi-judicial proceeding, the Authority, shall be entitled to appoint/engage the services of another contractor to execute or complete the Project with or without appropriate changes or modifications and the same shall be without prejudice to the Concessioner's liabilities and obligations under Article 36 and similar such Articles. In case termination of this Agreement is set aside pursuant to legal or quasi-judicial proceedings, the Concessionaire shall be put to the same position as if such termination had never happened.

## ARTICLE 35 - DIVESTMENT OF RIGHTS AND INTEREST

### 35.1 Divestment Requirements

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

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the PM MITRA PARK LUCKNOW free and clear of all Encumbrances,
- (c) cure all Project Assets, structures and equipment, of all defects and deficiencies so that the Project is compliant with the Safety Requirements, and Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project and its design, engineering (as required for proper execution and completion of the Project as envisaged by the Authority), construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date, in accordance with this Agreement. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction and proper execution and completion of the Project, construction and its operation and maintenance of the Project, as and shall be assigned to the Authority free of any Encumbrance;
- (e) the staff recruited by the Concessionaire shall not be transferred to the Authority upon termination of this Agreement;
- (f) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (g) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project , including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (h) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Facilities, free from all Encumbrances, absolutely unto the Authority or to its nominee.

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

## **35.2 Inspection and cure**

Not earlier than [90 (ninety)] days prior to Termination but not later than [15 (fifteen)] days prior to the effective date of such Termination, the Independent Expert shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 36 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 35.

## **35.3 Cooperation and assistance on transfer of Project**

- 35.3.1 The Parties shall cooperate on a best efforts basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 35.3.2 The Parties shall provide to each other, [9 (nine)] months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its Concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 35.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 35.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure as set out under Clause 41.1 shall apply.
- 35.3.4 The Authority reserves the right to invite bids for the Project at an appropriate time before expiry of Concession Period to enable smooth transition. The Concessionaire reserves the right to bid. The Authority reserves the right to amend the bid conditions, scope of work etc. while inviting fresh bids. The Concessionaire shall allow the core team (consisting of maximum of four persons) of such successful bidder to enter the premises 7 (seven) days before expiry of Concession Period to monitor work and take charge at the appointed hour.
- 35.3.5 During re-bidding of the Project, the Concessionaire shall have the first right of refusal, subject to the following:
- (a) The Concessionaire shall participate in the re-bid of the Project;
  - (b) The Authority shall reserve the right to modify existing or introduce new terms and conditions and bid parameters; and
  - (c) The Concessionaire shall have a right to match the highest bid to exercise the first right of refusal if its bid is within the range of 10% (ten per cent) of the most competitive bid received.



#### **35.4 Vesting Certificate**

The divestment of all rights, title and interest in the PM MITRA PARK LUCKNOW 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-T (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 PM MITRA PARK LUCKNOW, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be constructed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the PM MITRA PARK LUCKNOW on the footing that all Divestment Requirements have been complied with by the Concessionaire.

#### **35.5 Divestment costs etc.**

- 35.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the PM MITRA PARK LUCKNOW in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 35.5.2 In the event of any Dispute relating to matters covered by and under this Article 35, the Dispute Resolution Procedure as set out under Clause 41.1 shall apply.

## ARTICLE 36 - DEFECTS LIABILITY AFTER TERMINATION

### 36.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of [120 (one hundred and twenty)] days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Expert in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of [15 (fifteen)] days from the date of notice issued by the Authority/Independent Expert in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within [15 (fifteen)] days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to recover the same from the Escrow Account or from the Performance Guarantee provided thereunder. For the avoidance of doubt, the provisions of this Article 36 shall not apply if Termination occurs prior to COD.

### 36.2 Retention of Escrow Account

- 36.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 36.2.3, a sum equal to [5% (five per cent)] of the Concession Fee including Revenue Share for the year immediately preceding the Transfer Date, shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 36.1.
- 36.2.2 Without prejudice to the provisions of Clause 36.2.1, the Independent Expert shall carry out an inspection of the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW is such that a sum larger than the amount stipulated in Clause 36.2.1, should be retained in the Escrow Account and for a period longer than the aforesaid [120 (one hundred and twenty)] days, the amount recommended by the Independent Expert shall be retained in the Escrow Account for the period specified by it.
- 36.2.3 The Concessionaire may, for the performance of its obligations under this Article 36, provide to the Authority in the form of Insurance Surety Bond (issued by Insurance Company authorized by Insurance Regulatory and Development Authority of India in the form set forth in Annexure I of Schedule-F), Account Payee Demand Draft, Banker's Cheque or e- Bank Guarantee from a Bank for a sum equivalent to the amount determined under Clause 36.2.1 or 36.2.2, 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 36. Upon furnishing of a Performance Guarantee under this Clause 36.2.3, the retention of funds in the Escrow Account in terms of Clause 36.2.1 or 36.2.2, as the case may be, shall be dispensed with.

**Part VI**  
**Other Provisions**

Draft Concession Agreement

## ARTICLE 37 - ASSIGNMENT AND CHARGES

### 37.1 Restrictions on assignment and charges

- 37.1.1 Subject to Clauses 37.2 and 37.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which the Authority shall be entitled to decline without assigning any reason.
- 37.1.2 Subject to the provisions of Clause 37.2, 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.

### 37.2 Permitted assignment and charges

The restraints set forth in Clause 37.1 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, a charge on the Escrow account arising or created in the ordinary course of business of the Project, and a security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project. For the avoidance of doubt, the Senior Lenders would be entitled to create a lien on the Escrow Account, subject to and without prejudice to the rights of the Authority under this Agreement.
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

### 37.3 Substitution Agreement

- 37.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "**Substitution Agreement**") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-U.
- 37.3.2 Upon substitution of the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such

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

**37.4 Assignment by the Authority**

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

37.4.2 Any assignment under this Article 37 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.

Draft Concession Agreement

## ARTICLE 38 - CHANGE IN LAW

### 38.1 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. xx (Rupees only)]<sup>21</sup> or 2% (two per cent)] of the Realisable Fee 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 increased costs, 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 arrangements:

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 as set out under Clause 41.1. For the avoidance of doubt, it is agreed that this Clause 40.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

### 38.2 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. xx (Rupees only) or 2% (two per cent)] of the Realisable Fee 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 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 as set out under Clause 41.1. For the avoidance of doubt, it is agreed that this Clause 38.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

---

<sup>21</sup> This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of 1 Cr for every Rs 500 Cr of Total Project Cost.

### **38.3 Protection of NPV**

Pursuant to the provisions of Clauses 38.1 and 38.2 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.

### **38.4 Restriction on cash compensation**

The Parties acknowledge and agree that the demand for cash compensation under this Article 38 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 39 - LIABILITY AND INDEMNITY

### 39. General indemnity

- 39.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “**Authority Indemnified Persons**”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of Services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 39.1.2 The Authority shall indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceedings, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

### 39.2 Indemnity by the Concessionaire

- 39.2.1 Without limiting the generality of Clause 39.1, 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.
- 39.2.2 Without limiting the generality of the provisions of this Article 39, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, confidentiality rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make



every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **39.3 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 39 (the “**Indemnified Party**”) it shall notify the other Party (the “**Indemnifying Party**”) within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **39.4 Defence of claims**

- 39.4.1 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 39, 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.
- 39.4.2 If the Indemnifying Party has exercised its rights under Clause 39.3, 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).
- 39.4.3 If the Indemnifying Party exercises its rights under Clause 39.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or
  - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

- (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 39.4.3 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.

### **39.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 39, 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.

### **39.6 Survival on Termination**

The provisions of this Article 39 shall survive Termination.

## **ARTICLE 40 - RIGHTS AND TITLE OVER THE SITE**

### **40.1 Licensee rights**

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

### **40.2 Access rights of the Authority and others**

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

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

### **40.3 Property taxes**

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

### **40.4 Restriction on sub-licensing / leasing**

The Concessionaire shall not sub- license or lease the whole or any part of the land comprising the Site, licensed to it by the Authority under this Deed, to any person in any form or under any arrangement, device or method, provided that the Concessionaire shall be entitled to:

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

### **40.5 Rights of sub-licensees / lessees after Termination**

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

## ARTICLE 41 - DISPUTE RESOLUTION

### 41.1 Dispute resolution

- 41.1.1 In the event any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the “**Dispute**”), either party may call upon the Independent Expert, to mediate and assist the Parties in arriving at an amicable settlement thereof..
- 41.1.2 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.
- 41.1.3 Dispute Resolution Board (DRB)

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 **Dispute Resolution Board** (“DRB”) In accordance with the procedure set forth in the Schedule W to the Concession Agreement. The decision(s) of the Dispute Resolution Board shall be binding on both Parties, who shall promptly give effect to unless and until the same is revised / modified, as hereinafter provided, in a conciliation / Arbitral Tribunal.

### 41.2 Conciliation

If either Party is dissatisfied with any decision of the DRB, and/ or if the DRB is unable to resolve the Dispute, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 41.3 but before resorting to such arbitration, the Parties agree to explore conciliation by the Conciliation Committees of Independent Experts set up by the Authority in accordance with the procedure decided by the panel of such experts and notified by the Authority on its website including its subsequent amendments. In the event of the conciliation proceedings being successful, the parties to the Dispute would sign the written settlement agreement and the conciliators would authenticate the same. Such settlement agreement would then be binding on the Parties in terms of Section 73 of the Arbitration Act. In case of failure of the conciliation process even at the level of the Conciliation Committee, either party may refer the Dispute to arbitration in accordance with the provisions of Clause 41.3.

### 41.3 Arbitration

- 41.3.1 Any Dispute which is not resolved amicably by conciliation as provided in Clause 41.2 shall be finally decided by reference to arbitration by a Arbitral Tribunal appointed in accordance with Article 41.4.2. Such arbitration shall be held in accordance with the Arbitration Rules. The venue of such arbitration shall be Lucknow, Uttar Pradesh, and the language of arbitration proceedings shall be English.
- (a) Arbitral Tribunal shall consist of three arbitrators. Each Party shall appoint one arbitrator, and the third arbitrator shall be appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the provisions of Arbitration and Conciliation Act, 1996.

- 41.3.2 The arbitrators shall make a reasoned award (the “**Award**”). Any Award made in any arbitration held pursuant to this Article 41 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.
- 41.3.3 The Concessionaire and the Authority agree that an Award may be enforced against the Concessionaire and/or the Authority, as the case may be, and their respective assets wherever situated.
- 41.3.4 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

**41.5 Adjudication by Regulatory Commission or Authority**

In the event of constitution of a statutory regulatory authority, tribunal or commission, as the case may be 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 41.3, be adjudicated upon by such regulatory authority, tribunal or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly.

For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or court or competent jurisdiction, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

## ARTICLE 42 - DISCLOSURE

### 42.1 Disclosure of Specified Documents

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

### 42.2 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 PM MITRA PARK LUCKNOW, free of charge, during normal business hours on all working days, at the Concessionaire’s registered office. The Concessionaire shall make copies of the same available to any person upon payment of copying charges on a ‘no profit no loss’ basis.

### 42.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 42.1 and 42.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

*Explanation:*

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 42.1 and 42.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

## ARTICLE 43 - REDRESSAL OF PUBLIC GRIEVANCES

### 43.1 Complaints Register

- 43.1.1 The Concessionaire shall maintain a public relations office at the Project where it shall keep a register (the “**Complaint Register**”) open to public access at all times for recording of complaints by any person (the “**Complainant**”). Further, the website / IT platform of the Concessionaire shall allow registration of complaints. The Concessionaire shall provide the Authority with a login ID through which the Authority can monitor the complaints. Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at the Project so as to bring it to the attention of all Users.
- 43.1.2 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.
- 43.1.3 Without prejudice to the provisions of Clauses 43.1.1 and 43.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

### 43.2 Redressal of complaints

- 43.2.1 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.
- 43.2.2 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 and complaints received on IT platform including the action taken thereof 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 an Independent Committee constituted by the Authority. The said Committee will, after affording adequate opportunity to the Concessionaire of being heard decided the matter and decision so made shall be binding on the Concessionaire.

## ARTICLE 44 - MISCELLANEOUS

### 44.1 Governing law and jurisdiction

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

### 44.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

### 44.3 Depreciation and Interest

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

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

### 44.4 Delayed payments

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



#### **44.5 Waiver**

- 44.5.1 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 authorized representative of the Party; and
  - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- 44.5.2 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.

#### **44.6 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.

#### **44.7 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.

#### **44.8 Survival**

44.8.1 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.

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

#### **44.9 Entire Agreement**

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

#### **44.10 Severability**

If for any reason whatsoever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement under Clause 41.1 or otherwise.

#### **44.11 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.

#### **44.12 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.

#### **44.13 Successors and assigns**

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

#### **44.14 Notices**

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside [City Name] may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Chairman of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in [City Name] it may send such notice by facsimile or email and by registered acknowledgement due, air mail or by courier; and
- (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 email, it shall be deemed to have been delivered on the working day following the date of its delivery.

#### **44.15 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.

#### **44.16 Counterparts**

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

## ARTICLE 45 - DEFINITIONS

### 45.1 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;

“**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 Schedule Completion Date, 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 Schedule Completion Date and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on the Schedule Completion Date 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 Schedule Completion Date to the extent of variation in WPI occurring between Schedule Completion Date and the Reference Date;
- (c) after the 4th (fourth) anniversary of Schedule Completion Date, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by [0.17% (zero point one seven per cent)]<sup>22</sup> thereof at the commencement of each month following the 4th (fourth) anniversary of Schedule Completion Date and the amount so arrived at shall be revised to the extent of variation in WPI occurring between Schedule Completion Date and the Reference Date.

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

“**Affected Party**” shall have the meaning as set forth in Clause 31.1;

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

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

---

<sup>22</sup> This number shall be substituted in each case by the figure arrived at upon dividing 100 by the number of months comprising the Concession Period. For example, the figure for a 50 year Concession Period shall be  $100/600 = 0.1667$  rounded off to two decimal points i.e. 0.17.

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

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

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

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

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

**“Associated Firm”** shall have the same meaning as ascribed to the expression “Associate”, provided that the reference to 50% (fifty per cent) of voting shares in respect of an Associate shall be read as more than **25% (twenty five per cent)** of voting shares in the case of an Associated Firm.

**“Authority Default”** shall have the meaning as set forth in Clause 34.2.1;

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

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

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

“**Bank Rate**” means the average of 1 year MCLR rate of interest of top 5 (five) Scheduled Commercial banks of India

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

“**Bid Due Date**” shall have the meaning as ascribed to it under Volume I-RFP;

“**Bid Security**” means the security provided by the [Concessionaire/ {selected bidder/Consortium}] to the Authority along with the Bid in a sum of **Rs. 16,80,00,000/- (Rupees Sixteen Crore and Eighty Lac only)**<sup>23</sup>, in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security;

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

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

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

“**Change in Ownership**” means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder/ Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and 1 (one) year thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder/ any Consortium Member} to the total Equity, if it occurs prior to completion of a period of 1 (one) year after COD, shall constitute Change in Ownership;

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

“**Check Point**” shall have the meaning as ascribed to it under Schedule Q of this Agreement;

“**COD**” or “**Commercial Operation Date**” means the date of Appointed Date;

---

<sup>23</sup> To be calculated @ [\*] % of the amount specified in the definition of Total Project Cost.

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

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

“**Commercial Zone**” shall mean the real estate forming part of the Site and earmarked as Commercial Zone in Schedule-B;

“**Competing Facility**” refers to a comprehensive area dedicated to various stages of the textile manufacturing value chain. This facility is established by either the Government of India, state or territorial governments, central public sector enterprises (CPSUs), or state-level public enterprises (SLPEs) in a Public-Private Partnership (PPP) mode. To qualify as a Competing Facility, it must have a minimum land area of 100 acres;

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

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

“**Concession Fee**” shall have the meaning as set forth in Clause 25.1;

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

“**Concessionaire Default**” shall have the meaning as set forth in Clause 34.1.1;

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

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

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

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

“**Construction Works**” means all works and things necessary to complete the PM MITRA PARK LUCKNOW 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 material agreement or contract for construction, operation and/or maintenance of the PM MITRA PARK LUCKNOW 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;

“**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 as set forth in Sub-clause (w) of Clause 1.2.1;

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

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

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

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

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

“**Dispute**” shall have the meaning as set forth in Clause 41.1.1;

“**Dispute Resolution Procedure**” means the procedure for resolution of Disputes as set forth in Article 41.1.1;

“**Divestment Requirements**” means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 35.1;

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



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

**“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;

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

**“Encumbrances”** means, in relation to the PM MITRA PARK LUCKNOW 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 PM MITRA PARK LUCKNOW, where applicable herein but excluding utilities referred to in Clause 11.1;

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

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

**“Escrow Account Leasing”** 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 in relation to sub-license / lease in accordance with the provisions of this Agreement, and includes the sub-accounts of such Escrow Account Leasing;

**“Escrow Agreement”** shall have the meaning as set forth in Clause 28.1.2;

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

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

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

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

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

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

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

**“Financing Agreements”** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes 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 31.1.

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

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

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

**“Gross Revenue”** means

(i) all the pre-tax revenues chargeable by the Concessionaire from the Project / Project Facilities and Services provided at PM MITRA PARK LUCKNOW. Gross Revenue shall be computed on the basis of the Fees paid by the User leviable for and in respect of the Project Facilities and Services provided during the relevant period of computation.

For the avoidance of doubt, for the purpose of Gross Revenue, the same shall include

- (a) revenue from leasing / sub-licensing of lands earmarked for industrial use as per the Master Plan to perspective textile players i.e. lease premium and/or lease rentals and/or any other charges levied for the use of the land as defined in the approved Master Plan.
- (b) e premium and/or lease rentals and/or any other charges levied for the use of the land as defined in the approved Master Plan.

- (c) revenue from leasing / sub-licensing of logistic assets and services be it warehouses or any other assets and designated commercial area as defined in approved Master Plan.
- (d) revenue from leasing / sub-licensing of any other lands earmarked for any and all other uses as per the approved Master Plan.
- (e) including charges for Common Area Maintenance charges levied by the Concessionaire.
- (f) Further, in computing the Gross Revenue, income from interest on investments such as security deposits, advances, premiums received etc. shall also be included.
- (g) including the charges for the usage of all project utilities.
- (h) revenue from any other activities related to and/or carried inside the Park premises.

For the avoidance of doubt, for the purpose of Gross Revenue, the same shall not include

- (a) It is clarified that deferments (other than those offered in normal course of business), if any, offered by the Concessionaire to the Users ; or amounts, if any, not collected by the Concessionaire for any reason whatsoever (provided the Concessionaire has demonstrated to the satisfaction of the Authority that all available legal recovery remedies have been exhausted and the same is certified as non-recoverable by statutory auditors) in respect of the Project Facilities and Services, shall be ignored for the purpose of computing Gross Revenue.
- (b) overable by statutory auditors) in respect of the Project Facilities and Services, shall be ignored for the purpose of computing Gross Revenue.
- (c) ignored for the purpose of computing Gross Revenue.
- (d) Any income receipts from the sale of assets (provided the proceeds are utilized for replacement of the same assets or its substitute in the Project and certified by the Independent Expert), amount received by the Concessionaire by way of damages from third parties (excepting damages received from the Users on account of demurrage or such other related charges in respect of the Project Facilities and Services),
- (e) taxes and cesses in respect to the Project Facilities and Services, if any collected and paid to any Government authority shall not be included in computation of Gross Revenue.
- (f) any Government authority shall not be included in computation of Gross Revenue.

“**Indemnified Party**” means the Party entitled to the benefit of an indemnity pursuant to Article 39;

“**Indemnifying Party**” means the Party obligated to indemnify the other Party pursuant to Article 39;

“**Independent Expert**” shall have the meaning as set forth in Clause 22.1;

“**Indirect Political Event**” shall have the meaning as set forth in Clause 31.3;

“**Insurance Cover**” means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 29, and includes all insurances required to be taken out by the Concessionaire under Clause 29.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

“**Intellectual Property**” means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and

including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

“**Key Performance Indicators**” shall have the meaning set forth in Article 23;

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

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

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

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

“**Maintenance Manual**” shall have the meaning as set forth in Clause 17.3.1;

“**Maintenance Programme**” shall have the meaning as set forth in Clause 17.4.1;

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

“**Master Plan**” shall mean master plan finalized in terms of Article 12 for construction, development and operation of the PM MITRA PARK LUCKNOW in accordance with the provisions of this Agreement;;

“**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**;

“**Media**” means of communication or dissemination of information, including but not limited to newspapers, magazines, television, radio, internet, social media, billboards, and any other form of mass communication.

“**Minimum Guaranteed Revenue Share**” shall have the meaning set forth in Clause 25.4;

“**Monthly Fee Statement**” shall have the meaning ascribed to it in Clause 28.7;

“**PM MITRA PARK LUCKNOW**” shall mean whole of the physical assets and other assets created for the construction, operation, maintenance and management of a integrated textile park with a minimum area of 1000 (one thousand) acres at the Site, including any expansion, modification, upgradation thereof , wherein Services relating to yarn manufacturing, garmenting, fabric manufacturing, export, processing, both for national and international transit are carried out in an integrated facility in accordance with the Scope of Work and Standards & Specifications detailed in this Agreement, services and equipment relating to and in respect of Scope of Work and Project Assets.

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

“**Non-Political Event**” shall have the meaning as set forth in Clause 31.2;

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

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

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

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

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

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

“**Panel of Chartered Accountants**” shall have the meaning as set forth in Clause 30.2.1;

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

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

“**Political Event**” shall have the meaning set forth in Clause 31.4;

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

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

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

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

and (h) Applicable Permits and authorizations relating to or in respect of the PM MITRA PARK LUCKNOW.

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

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

**“Project Capacity”** means the throughput capacity for various activities carried out inside PM MITRA PARK LUCKNOW

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

**“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 42.3;

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

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

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

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

**“Realisable Fee”** means all the Fee due and realisable under this Agreement, with or without any discounts or reduction in Fee, but does not include Fee that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, which shall truthfully reflect the actual collection of Fee, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply

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

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

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

**“Revenue Share”** shall have the meaning as set forth in Clause 25.2;

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

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

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

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

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

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

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

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

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

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

“**State**” means the State of [Maharashtra] in which the PM MITRA PARK LUCKNOW is situated and “**State Government**” means the government of that State;

“**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 30.2.1;

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

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

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

deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Substitution Agreement**” shall have the meaning as set forth in Clause 37.3;

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

“**Suspension**” shall have the meaning as set forth in Clause 33.1;

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

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

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

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

“**Tests and Inspection**” means the tests set forth in Schedule-I to determine the completion of the PM MITRA PARK LUCKNOW in accordance with the provisions of this Agreement;

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

- (a) the aggregate value of capital cost of the Project (less equity support provided by GoI);
- (b) the actual aggregate value of actual capital cost of the Project (less equity support provided by GoI); and
- (c) a sum of Rs. 1,680 Crore (Rupees sixteen hundred and eighty crore only), less equity support provided by GoI;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the



date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

“**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;

“**Unscheduled Maintenance**” shall have the meaning as set forth in Clause 17.18;

“**User**” means a person who uses or intends to use the Services of PM MITRA PARK LUCKNOW or any part thereof on payment of Fee or in accordance with the provisions of this Agreement and Applicable Laws;

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

“**Value Added Services**” shall mean services in addition to core logistics services that are likely to be provided at PM MITRA PARK LUCKNOW as outlined in Schedule C

“**Vesting Certificate**” shall have the meaning as set forth in Clause 35.4;

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of THE Authority by:

(Signature)

(Name)

(Designation)

(Address)

(e-mail address)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the ..... day of ..... 20..... Hereunto affixed in the presence of ..... Director, who has signed these presents in token thereof and ..... Company Secretary / Authorised Officer who has countersigned the same in token thereof<sup>24</sup>;

(Signature)

(Name)

(Designation)

(Address)

(e-mail address)

In the presence of:

- 1.
- 2.

---

<sup>24</sup> To be affixed in accordance with the articles of association of the Concessionaire and the resolution passed by its Board of Directors.

Draft Concession Agreement

**SCHEDULES**

## **SCHEDULE A - SITE OF THE PROJECT**

### **1. The Site**

- a) The Site (geo- co-ordinates provided in Annex -I) of the Project Facility shall include the land, buildings and structures as described in Annex-I of this Schedule A; and
- b) An inventory of the Licensed Premises including the land, 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.
- c) The Site of the Project Facility includes all the land earmarked for the PM MITRA PARK LUCKNOW and specifies the location and land use. [The Site of the Project Facility also includes the additional land earmarked for future expansion of the PM MITRA PARK LUCKNOW that shall take place in accordance with the provisions of this Agreement.]
- d) The proposed PM MITRA PARK Lucknow site is divided into two land parcels by (Major District Road - 74C).

**Annex - I (Schedule-A)**

**SITE FOR THE PROJECT FACILITY**

The site for PM-MITRA Park at Lucknow is located between the borders of Lucknow & Hardoi Districts. The PM-MITRA Park is well connected with all major cities through National Highways such as NH-30, NH-27 & NH-731. The site can be accessed through the MDR-74C which is 2 lane road. The MDR-74C connects NH-30 (Lucknow-Sitapur Highway) and NH -731 (Lucknow – Hardoi Highway) with the proposed site, which further connects Delhi.

The total area of the Site for development of PM-MITRA Park is 1000 acres. The nearest railway station to the PM-MITRA Park is Malihabad railway station (~15km) on the Lucknow-Delhi railway line. The Lucknow-Delhi Railway Line is the nearest abutting railway line to the site.



Access roads to proposed PM Mitra Lucknow site



Existing railway line connecting Lucknow city  
For representative purposes only

**For PM-MITRA PARK**

Site Attributes & Connectivity	Description
Total Site area	1000 acres
Site Ownership Status	Site is under possession of the Authority
Site Land Use	Allocated for the PM MITRA Textile and Apparel Park
Site Access Road	The access road to the Site MDR-74C (abutting the Site).
Boundary Pillar	Boundary pillars across the periphery of the Site has already been constructed with an approximate length of 22 km and construction of boundary wall is under progress.
Other Approvals	Environment Clearance granted for PM MITRA Park Lucknow. Ground Water Clearance granted for PM MITRA Park Lucknow.
Buildings	Single story old structure (approximately 900 Sqm.) exists inside the park which was previously used by agricultural department. This structure is being renovated which may be temporarily used as a site office.

**CO-ORDINATES OF PROPOSED TEXTILE & APPERAL PARK AT VILLAGE ATARI  
IN DISTRICT- LUCKNOW**

<b>POINT_ID</b>	<b>EASTING</b>	<b>NORTHING</b>
1	469471.7104	2993587.309
2	469474.7677	2993590.13
3	469479.306	2993589.969
4	469535.0481	2993571.456
5	469594.3559	2993553.912
6	469719.6761	2993513.451
7	469752.3694	2993530.681
8	469797.975	2993555.921
9	469827.2399	2993569.867
10	469963.3629	2993547.767
11	470004.6212	2993540.27
12	470042.7487	2993533.588
13	470375.933	2993316.976
14	470434.7425	2993326.569
15	470545.5821	2993785.875
16	470807.1682	2994023.016
17	470836.3107	2994000.22
18	471039.4217	2994018.474
19	471316.9847	2993742.723
20	471674.2222	2993790.552
21	471680.4988	2993808.048
22	471842.8007	2993874.803
23	471874.973	2993868.092
24	471732.3016	2993404.866
25	471718.9085	2993370.758
26	471901.3336	2993431.683
27	471883.0763	2993458.15
28	472049.8863	2993456.813

**CO-ORDINATES OF PROPOSED TEXTILE & APPERAL PARK AT VILLAGE ATARI  
IN DISTRICT- LUCKNOW**

<b>POINT_ID</b>	<b>EASTING</b>	<b>NORTHING</b>
29	472081.1229	2993537.459
30	472244.6486	2993409.114
31	472286.752	2993387.231
32	472442.7632	2993307.894
33	472458.1265	2993302.665
34	472506.0498	2993275.459
35	472575.5999	2993138.073
36	472569.3004	2993130.511
37	472562.2865	2993121.93
38	472560.2018	2993116.176
39	472697.2706	2992995.558
40	472708.1283	2992990.555
41	472752.1793	2992959.873
42	472744.4395	2992935.714
43	472812.7677	2992784.391
44	472814.4497	2992782.2
45	472857.2075	2992737.376
46	473073.0096	2992743.262
47	473080.8231	2992718.586
48	473099.337	2992696.103
49	473139.3464	2992659.538
50	473255.8301	2992839.005
51	473302.1481	2992901.708
52	473319.1144	2992936.371
53	473261.0857	2992969.854
54	473330.9524	2993053.015
55	473327.0563	2993051.084
56	473716.7475	2992839.62
57	473809.6752	2992811.314



**CO-ORDINATES OF PROPOSED TEXTILE & APPERAL PARK AT VILLAGE ATARI  
IN DISTRICT- LUCKNOW**

<b>POINT_ID</b>	<b>EASTING</b>	<b>NORTHING</b>
58	473870.5257	2992783.67
59	474203.6731	2992746.324
60	474229.9089	2992755.695
61	474455.081	2992844.251
62	474466.7036	2992844.856
63	474487.3184	2992834.848
64	474579.663	2992738.172
65	474605.3166	2992731.931
66	474783.9422	2992777.673
67	474779.1078	2992782.902
68	474776.688	2992787.453
69	474796.0246	2992824.19
70	474918.5842	2992931.032
71	474928.1439	2992937.968
72	474684.7519	2993257.144
73	474657.4171	2993264.268
74	474638.3828	2993269.933
75	474629.8778	2993270.769
76	474326.6492	2993329.14
77	474342.8719	2993317.737
78	474360.9531	2993301.88
79	474328.1128	2993179.778
80	474294.7412	2993192.55
81	473885.8141	2993398.851
82	473874.0387	2993403.891
83	473912.0324	2993456.842
84	473914.2232	2993460.233
85	473590.8305	2993785.961
86	473302.3082	2993903.973

**CO-ORDINATES OF PROPOSED TEXTILE & APPERAL PARK AT VILLAGE ATARI  
IN DISTRICT- LUCKNOW**

<b>POINT_ID</b>	<b>EASTING</b>	<b>NORTHING</b>
87	473294.0987	2993907.913
88	473263.2993	2993917.885
89	473243.9108	2993924.253
90	472346.9185	2994054.512
91	472335.7019	2994026.86
92	472330.1306	2994024.394
93	472229.9081	2994072.701
94	471819.4251	2995110.058
95	471840.0089	2995138.96
96	472533.2447	2995653.358
97	472550.1676	2995677.487
98	471672.4899	2995421.892
99	471540.5793	2995374.36
100	471454.7871	2995349.526
101	470917.3721	2995084.447
102	470901.4459	2995071.093
103	470891.8506	2995066.019
104	470985.6375	2995001.257
105	470994.4718	2994998.161
106	471001.6132	2994997.395
107	471024.0603	2994956.29
108	471025.4386	2994944.942
109	471024.546	2994934.448
110	471176.7546	2994679.042
111	471171.2623	2994679.33
112	471144.6767	2994688.955
113	470926.1808	2994692.395
114	470923.9282	2994684.329
115	470916.694	2994672.67

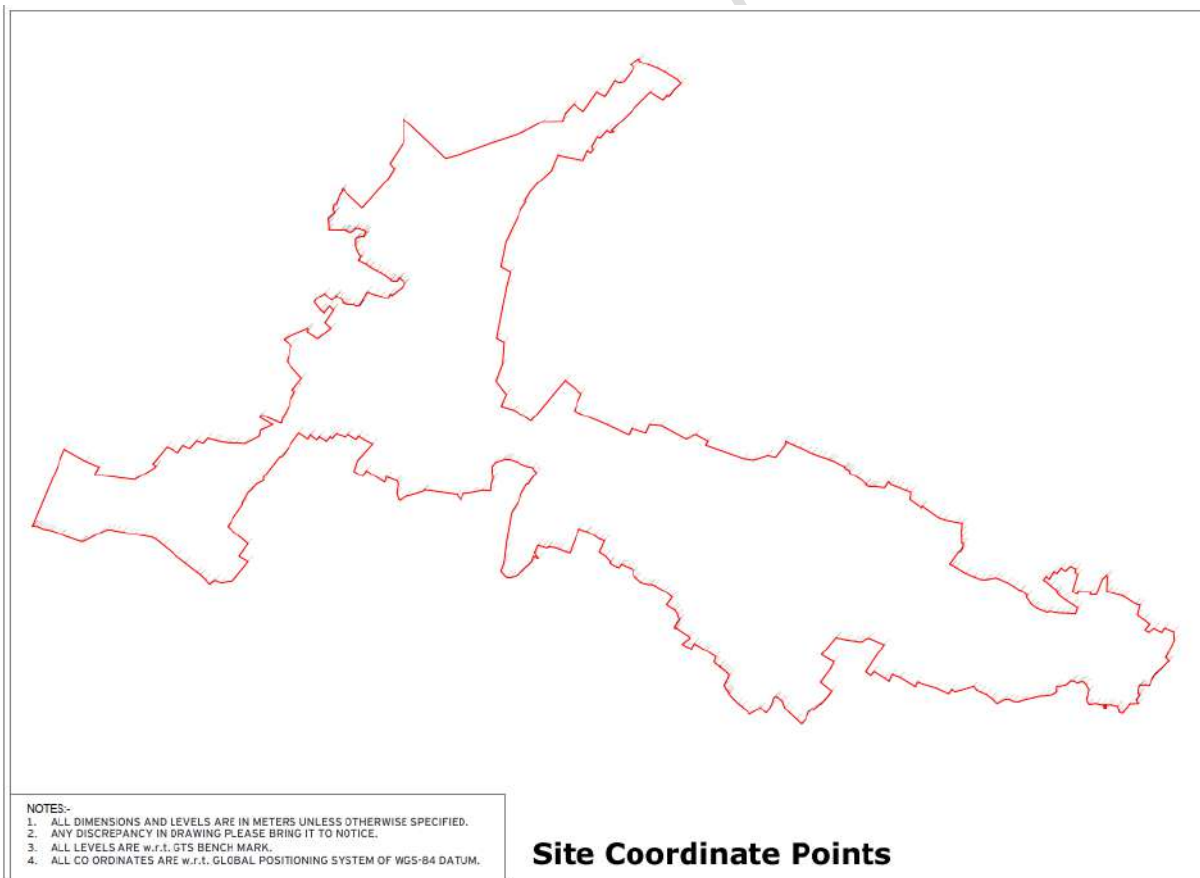
**CO-ORDINATES OF PROPOSED TEXTILE & APPERAL PARK AT VILLAGE ATARI  
IN DISTRICT- LUCKNOW**

<b>POINT_ID</b>	<b>EASTING</b>	<b>NORTHING</b>
116	470690.6545	2994490.151
117	470677.9434	2994483.597
118	470428.5193	2993986.617
119	470412.8779	2993986.734
120	470399.0195	2993987.803
121	470361.0184	2993994.777

**ROAD CONNECTIVITY**

The PM-MITRA PARK is accessible via a 2- lane road MDR-74C which connects NH-30 on the north and the NH-731 in the south.

The land for road connectivity will not form part of the PM-MITRA Park Site.



*For representative purposes only*

## **SCHEDULE B - DEVELOPMENT OF THE PM-MITRA PARK, LUCKNOW**

### **1. Development of the PM-MITRA Park, Lucknow**

Development of the PM-MITRA Park shall include construction of the PM-MITRA Park as described in this Schedule – B and in conjunction with Schedule A and Schedule D.

### **2. PM-MITRA Park**

Notwithstanding anything contrary to facilities mentioned of Schedule A, the development of the PM-MITRA Park shall include:

#### **Internal Road and Circulation Area**

- (a) Internal roads
- (b) Paved area for circulation
- (c) Entry – Exit Road connecting the proposed site with the external roads outside the PM MITRA Park Lucknow

#### **Logistic and Parking Facilities**

- (d) Creating sustainable logistic facilities for smooth functioning of the park and providing all logistics support needed for all users of the PM MITRA Textile Park, Lucknow.
- (e) Parking facilities for trucks and other vehicles of users who come to avail the services of the PM-MITRA Park

#### **Administrative facilities and gate complex**

- (f) Administrative facility building including space for offices, dispensary, workers canteen, crèche, pink toilets Centre of Excellence, skill development centre for training and capacity building, etc.
- (g) Integrated gate complex with access-controlled entry/ exit points and weighbridge, etc.

#### **Supporting facilities**

- (h) Facilities for providing O&M services for trucks, material handling equipment, etc.
- (i) Lodging and boarding facility, rest rooms etc. for drivers and support staff Hospitals, Flatted Factory, Plug & Play Infrastructure, Recreational Areas, Warehousing and Storage, School
- (j) Office Spaces, Convention Centre, Police station and Fuel Station to be provided.

#### **Utilities**

- (k) Utilities such as water distribution network, sump & overhead tank, rainwater harvesting, storm water drains, common effluent treatment plant with zero liquid discharge facility, Common Boiler, Construction of Pond (15 acre), water treatment plant, solid waste management, electrical substation and distribution network, power back-up, Recycled Water Networks, , pink toilet, telecom & ICT network, street lighting, fire station, fire water supply with hydrants & fire network, etc., and all other required facilities for the smooth operation of PM-MITRA PARK.
- (l) IT Infrastructure (hardware and software) required for maintenance of entry records, records for all types of core Services, Value Added Services and such other services as set forth in Schedule C.
- (m) The Concessionaire shall undertake shifting of existing utilities at the Site as per Article 11 of this Agreement.

#### **Landscaping and Horticulture Area**

- (n) Open landscape and horticulture area

#### **Commercial Zone**

- (o) Commercial Zone consisting of facilities such as hotel, convention centre, shopping complex, bank, ATM, retail spaces, office spaces, fuel station, etc.

**Any Other Facility**

- (p) Any other facilities or Services required on case-to-case basis for smooth functioning and operations of PM-MITRA Park like Worker hostel, ex-pat residences, Community Centres, Research & Development Centre, Testing Lab, Incubation Lab, Start-Up Centre, Water Retention Tank, Exhibition Ground, etc.
- (q) The development of the PM-MITRA PARK shall be undertaken in conformity with the Specifications and Standards set forth in Schedule – D.

**3. Commercial Zone Development**

- 1.3.1 Commercial Zone Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-II of this Schedule-B as approved in the Master Plan.
- 1.3.2 Commercial Zone Development shall be undertaken in conformity with the Specifications and Standards set forth in Schedule-D as approved in the Master Plan.

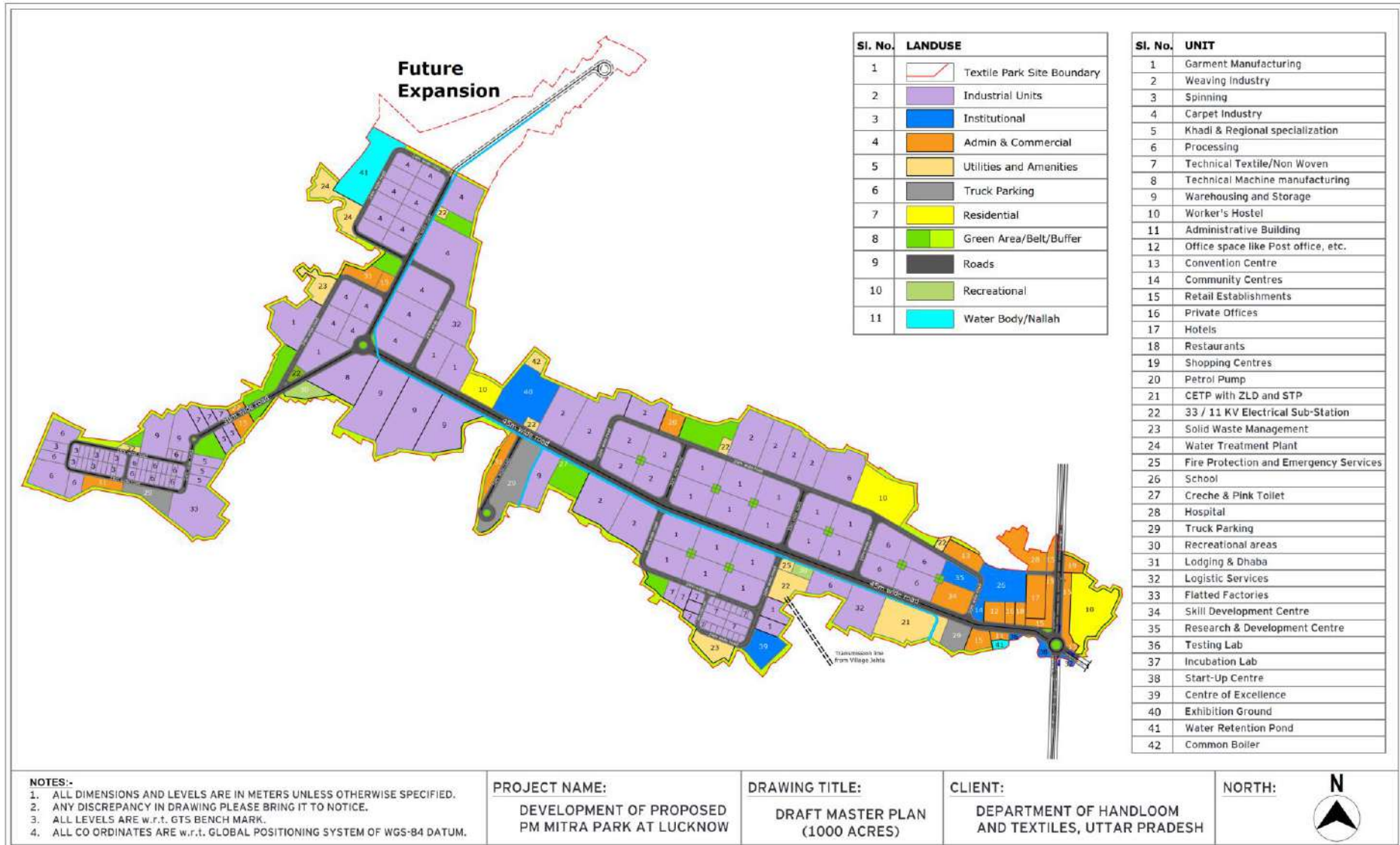
Draft Concession Agreement

**Annex – I (Schedule-B)**

**CONCEPT MASTER PLAN FOR THE SITE**

The Conceptual Master Plan is only for reference and the Concessionaire need to submit a final Master Plan and get it approved by the Authority as per the relevant clauses of this Concession Agreement.

Draft Concession Agreement

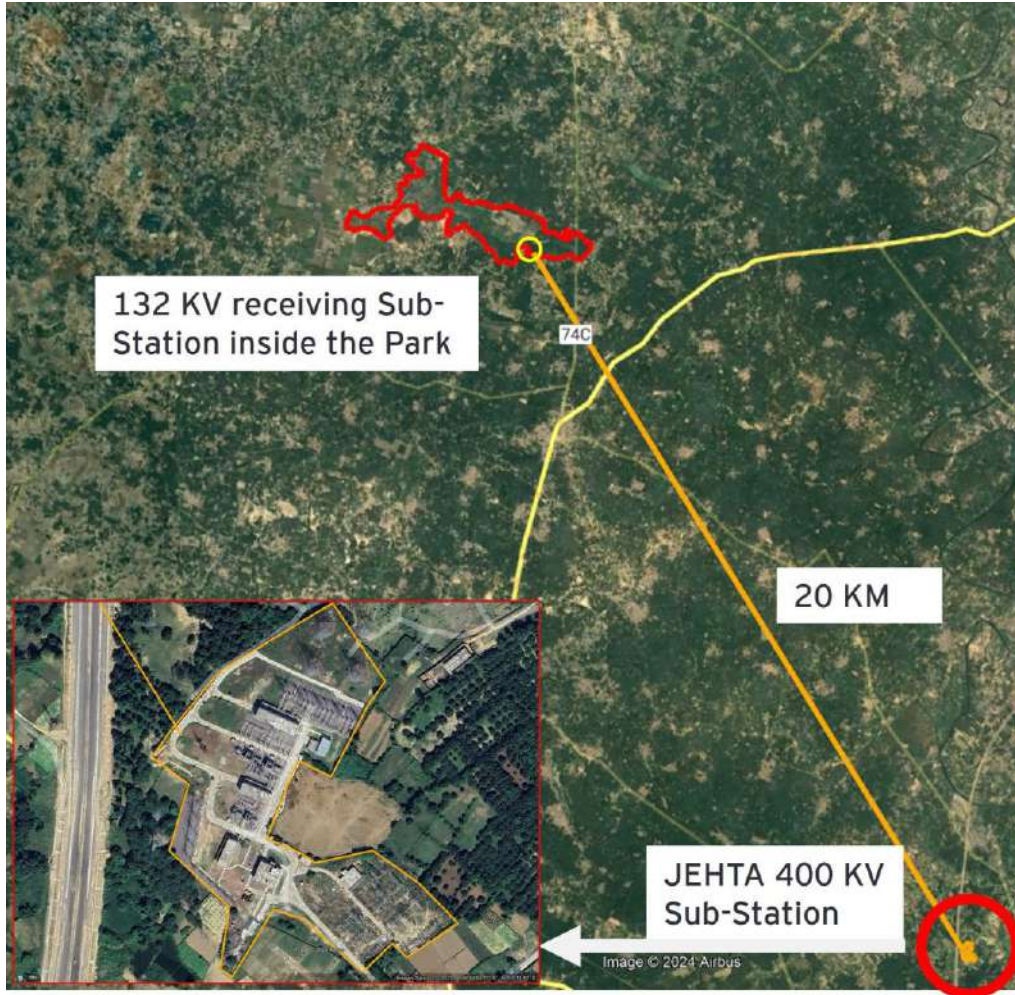


For representative purposes only and Concessionaire will make the detailed project report in which the master plan will get approved by Authority



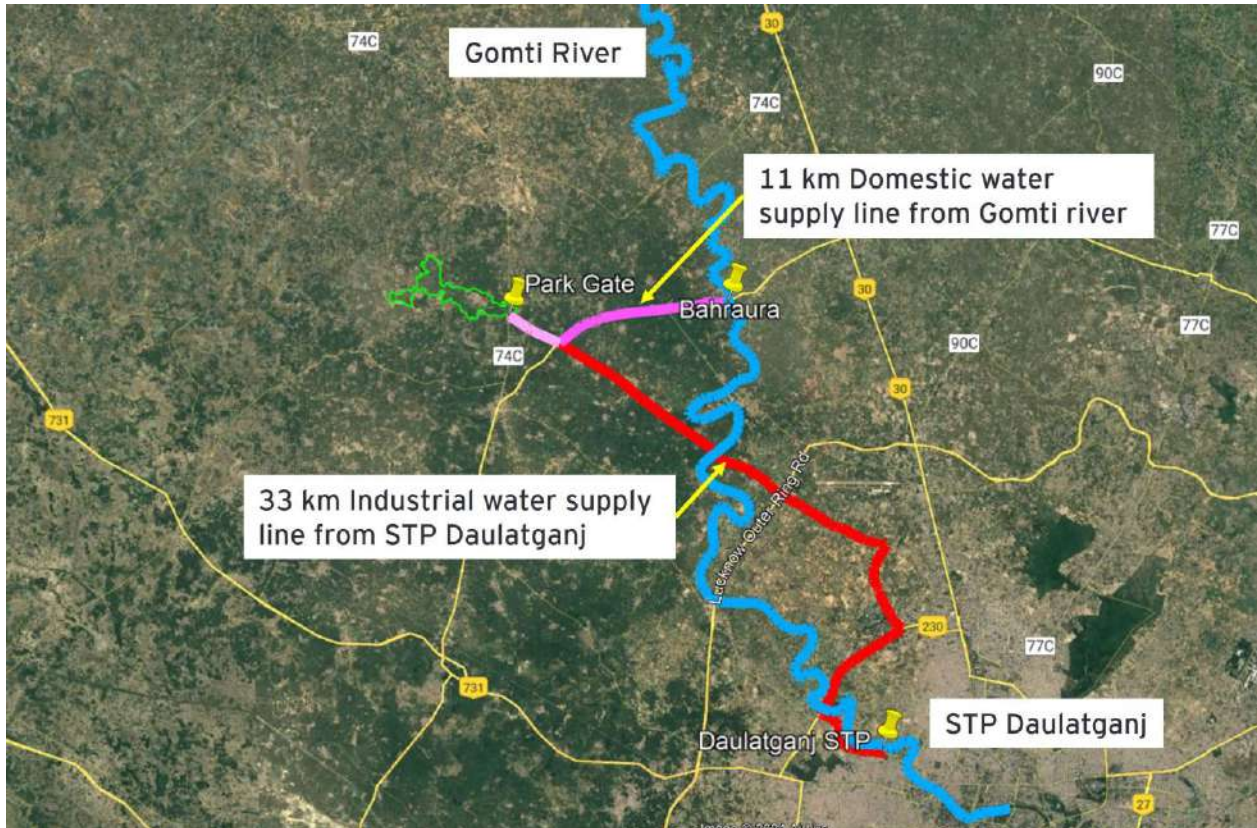
### Power and Water Supply Connection

The Authority shall provide requisite power supply connection and water supply connection up to the gate of the PM-MITRA Park site.



*Power Supply Route Alignment (For representative purposes only)*





*Water Supply Route Alignment (For representative purposes only)*

**Proposed Road Connection**

The Authority shall provide road connection up to the gate of the PM-MITRA Park Site as per Clause 5.23.1 of this Agreement. Construction of 4-lane greenfield road stretching from Raitha underpass at Outer Ring Road (Kisan Path) to the entrance of PM MITRA Park, covering a distance of 14.28 Km. Widening and strengthening of existing 2-lane road stretch from Raitha underpass up to IIM Lucknow, spanning 8.40 Km.



*Proposed Road Route Alignment (For representative purposes only)*

Items	% Range of land footprint of total area	
	Minimum (in %)	Maximum (in %)
Commercial Zone with facilities such as bank, ATM, retail spaces, convention center etc.,	As permissible under development control rules for Industrial area	10%

Draft Concession Agreement

## **Annex – II (Schedule – B)**

### **COMMERCIAL ZONE DEVELOPMENT**

The Concessionaire shall develop a Commercial Zone of area not more than 10% of the total site area. The Commercial Zones may include, but not limited to, the following: -

#### **Convention Centre**

- Convention halls / Community Centres
- Display/Exhibition Hall/Exhibition Ground
- Conference / Meeting rooms
- Pantry facility
- Public toilet facility
- Crèche

#### **Hotel**

- Lodging facilities
- Restaurant
- Lodging & Dhaba

#### **Shopping/Commercial Complex**

- Retail Establishments
- Shopping Centre
- Stationary shops, xerox and printing facility
- Bank and ATM
- Eateries and Restaurants
- Public toilet facility
- Crèche

#### **Offices**

- Office Spaces
- Canteen/Restaurants
- Conference Hall
- Public toilet facility
- Logistic Services
- Crèche

#### **Petrol Pump**

- Fuel (petrol/ diesel/CNG/EV charging) station
- Air filling station
- Motor repair
- Tyre puncture repair
- Pollution checking facility
- Round the clock convenient shopping with consumables
- Public toilet facility

#### **Recreational Facilities**

- Badminton and Tennis Courts
- Gymnasium/ Yoga and Meditation Centre
- Dance and Music Classes

- Art and Craft Workshops
- Festivals and Celebrations facility
- Public toilet facility

The Concessionaire shall display a physical 3D model of the PM-Mitra Park of appropriate size (in consultation with the Authority) at the convention centre.

Draft Concession Agreement

**Annex – III (Schedule-B)**

[Note 1: Through suitable drawings and description in words, the details of Railway Siding infrastructure provided by the Authority.]

Draft Concession Agreement

## **Annex – IV (Schedule-B)**

### **Provision related to Environment Protection**

The Authority has obtained the Environmental Clearance for the PM MITRA Park project. The Concessionaire shall in addition to the terms and conditions of the approvals, sanctions, permissions granted by relevant Government Instrumentality, relating to the Project, also comply and adhere to the following terms and conditions:

#### **General Conditions: (Construction phase)**

- (a) The solid waste generated should be properly collected and segregated. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
- (b) Disposal of muck construction spoils, including bituminous material during construction phase should not create any adverse effect on the neighbouring communities and be disposed taking the necessary precautions for general safety and health aspects of people, only in the approved sites with the approval of competent authority.
- (c) Any hazardous waste generated during construction phase should be disposed of as per applicable rules and norms with necessary approvals of the State Pollution Control Board.
- (d) Adequate drinking water and sanitary facilities should be provided for construction workers at the Site. Provision should be made for mobile toilets. The safe disposal of wastewater and solid wastes generated during the construction phase should be ensured.
- (e) Arrangement shall be made that waste water and storm water do not get mixed.
- (f) Water demand during construction should be reduced by use of pre-mixed concrete, curing agents and other best practices
- (g) The ground water level and its quality should be monitored regularly in consultation with Ground Water Authority, if ground water tapping is done.
- (h) Permission to draw ground water for construction of basement if any shall be obtained from the competent Authority prior to construction/operation of the project.
- (i) Fixtures for showers, toilet flushing and drinking should be of low. Flow either by use of aerators or pressure reducing devices or sensor based control.
- (j) The Energy Conservation Building code shall be strictly adhered to.
- (k) All the topsoil excavated during construction activities should be stored for use in horticulture/landscape development within the Project Site.
- (l) Additional soil for levelling of the proposed Site shall be generated within the Site (to the extent possible) so that natural drainage system of the area is protected and improved.
- (m) Soil and ground water samples to be tested to ascertain that there is no threat to ground water quality by leaching of heavy metals and other toxic contaminants.
- (n) Concessionaire to strictly adhere to all the conditions mentioned in State Protection and Preservation of Tree Act, as applicable, and as amended during the validity of Environment Clearance.
- (o) The diesel generator sets to be used during construction phase should be of low sulphur diesel type and should conform to Environments (Protection) Rules prescribed for air and noise emission standards.
- (p) Vehicles hired for transportation of raw material shall strictly comply the emission norms prescribed by Ministry of Road Transport & Highways Department. The vehicle shall be adequately covered to avoid spillage/leakages.
- (q) Ambient noise levels should conform to applicable standards both during day and night. Incremental pollution loads on the ambient air and noise quality should be closely monitored during construction phase. Adequate measures should be taken to reduce ambient air and noise level during construction phase, so as to conform to the stipulated standards by CPCB/UPPCB.
- (r) Diesel power generating sets proposed as source of backup power for elevators and common area illumination during construction phase should be of enclosed type and conform to rules made under the Environment (Protection) Act, 1986. The height of stack of DG sets should be equal to the height



needed for the combined capacity of all proposed DG sets. Use of low sulphur diesel is preferred. The location of the DG sets may be decided with in consultation with State Pollution Control Board.

- (s) Regular supervision of the above and other measures for monitoring should be in place all through the construction phase, so as to avoid disturbance to the surroundings by a separate environment cell /designated person.

**General Conditions: (Operation phase)**

- a)
- i. The solid waste generated should be properly collected and segregated.
  - ii. Wet waste should be treated by organic waste convertor and treated waste (manure) should be utilized in the existing premises for gardening. And, no wet garbage shall be disposed outside the premises.
  - iii. Dry/inert solid waste should be disposed of to the approved sites for land filling after recovering recyclable material.
- b) E-waste shall be disposed through Authorized vendor as per E-waste (Management and Handling) Rules 2016.
- c)
- i. The installation of the Sewage Treatment Plant (STP) should be certified by an independent expert and a report in this regard should be submitted to the UPPCB and Environment department before the project is commissioned for operation. Treated effluent emanating from STP shall be recycled/reused to the maximum extent possible Treatment of 100% grey water by decentralized treatment should be done. Necessary measures should be made to mitigate the odour problem from STP.
  - ii. Concessionaire to ensure 100 % treatment to sewage/liquid waste and explore the possibility to recycle at least 50% of water.
- d) Concessionaire shall ensure completion of STP, MSW disposal facility, green belt, development prior to occupation of the buildings. Concessionaire to explore possibility of utilizing excess treated water in the adjacent area for gardening before discharging it into sewer line.
- e) The Occupancy Certificate shall be issued by the Local Planning Authority to the Project only after ensuring sustained availability of drinking water, connectivity of sewer line to the Project Site and proper disposal of treated water as per environmental norms
- f) Traffic congestion near the entry and exit point from the roads adjoining the proposed Project Site must be avoided. Parking should be fully internalized and no public space should be utilized.
- g) Concessionaire to provide adequate electric charging points for electric vehicles (EVs).
- h) Green Belt Development shall be carried out considering Central Pollution Control Board (CPCB) guidelines including selection of plant species and in consultation with the local DFO, Agriculture Dept.
- i) A separate environment management cell with qualified staff shall be set up for implementation of the stipulated environmental safeguards.
- j) Separate funds of Rs 20 crore shall be allocated for implementation of environmental protection measures/EMP and Corporate Environment Responsibility (CER) cost along with item-wise break-up. These cost shall be included as part of the Bidding. The funds earmarked for the environment protection measures shall not be diverted for other purposes.
- k) Concessionaire should submit half yearly compliance reports in respect of the stipulated prior environment clearance terms and conditions in hard & soft copies to the State Pollution Control Board & SEEIA, on 1st June & 1st December of each calendar year, with intimation to the Authority.
- l) A copy of the clearance letter shall be sent by Concessionaire to the concerned Municipal Corporation and the local NGO if any, from whom suggestions/representations, if any, were received while processing the proposal. The clearance letter shall also be put on the website of the Concessionaire.
- m) The Concessionaire shall upload the status of compliance of the stipulated Environment Clearance conditions, including results of monitored data on their website and shall update the same periodically. It shall simultaneously be sent to the Regional Office of MoEF, the respective Zonal Office of CPCB and the SPCB. The criteria pollutant levels namely, SPM, RSPM, SO<sub>2</sub>, NO<sub>x</sub> (ambient levels as well as



stuck emissions or critical sector parameters, indicated for the Project shall be monitored and displayed at a convenient location near the main gate of the PM MITRA Park Lucknow by the Concessionaire in the public domain.

**General Conditions for the Project:**

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

**Specific Conditions for the Project:**

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

## **SCHEDULE C - SERVICES**

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

### **Part- Core Services**

Core Services shall mean:

- i. Textile park running services;
- ii. Textile park maintaining services;
- iii. Any other services on case to case basis

### **Part-B Value Added Services**

Value Added Services shall mean:

- i. State of the Art information technology (IT) services to provide convenience and visibility to customer through services such as online booking of services, track & trace, documentation, etc. for efficient management of services
- ii. A combination of two or more of the above services or operations.

### **Part-C Support Services**

Supporting facilities shall mean to include:

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

### **Part-D General Provisions**

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

## **SCHEDULE D - SPECIFICATIONS AND STANDARDS**

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

### **I. PM MITRA PARK LUCKNOW**

#### **1. Construction standard, including Construction Quality Plan**

##### **(a) Building Code:**

The National Building Code of India

- [Buildings as per CPWD specifications and as per the applicable development and regulatory norms of the Site.
  - RCC Structures shall be designed as per IS 456:2000
  - Steel Structures shall be designed in accordance with the provision IS 800:2007. Structural steel shall conform to IS 2062:2011. Tubular section shall conform to IS 4923:1997
  - Architectural design norms as per NBC
  - Structural design norms as per NBC and BIS
- Firefighting arrangement as per NBC]
- Indian Road Congress
- All roads are to be developed as Rigid Pavement / Flexible Pavement per IRC specifications and manual following MoRTH specifications for Roads and Bridges 5th revision and as revised time to time.
- Typical road section is provided in Annex-III of this Schedule-D for illustration purpose
- Road markings are to be provided as per IRC 35:2015
- Road signages are to be provided as per IRC 67:2012

##### **(b) Design Specifications:**

- All roads (designated for movement of cargo) shall be designed for turning radius as per IRC SP 41:1994 for trailers (with a minimum length of 18 meters).
- Parking spaces are to be as per SP 12:2015
- Paver blocks shall be as per SP 063 :2018
- The paved areas to be designed and constructed as per SP 63:2018 and ICPI Manual for pavements.
- Adequate numbers of 30 meters (or equivalent) high mast lighting tower with LED flood light is be installed. The LED shall have minimum average lumen level of 50 lux at outdoor operational areas. Beam angle of luminaries/ lamps positioning is to be suitable to cover illumination in ground as well as stored containers in the yard up to minimum 16 meters high. Lighting shall be as per SP 72:2010- National lighting Code.
- Adequate drainage system to be provided in the yard area conforming to applicable IS code provisions.

##### **(c) Construction Specifications:**

### **Levelling & Grading**

- Prior to the start of any activity of earthwork, the area under construction shall be cleared of shrubs, vegetation, grass, brushwood, trees, and saplings.
- The trees cut inside the Site shall be uprooted up to 1m below ground level and the branches to be chopped to small sizes and stacked at designated place within premises
- The Concessionaire shall prepare and submit the Independent Expert for approval the drawing showing the cutting and filling mentioning the Finished Ground Level (FGL) and various locations, road junctions etc.
- The unsuitable soil shall be removed for required depth prior to the start of any construction work.
- Site levelling and grading works to be done considering balanced cut & fill up to possible extent to minimize the borrow earth from the outside of Site. Unsuitable soil shall not be used for filling for below building, roads, open container yards & truck parking area
- Slope to be maintained in embankments at considerable level difference areas using slope protection measures or toe retaining structure.
- IS 3764:1992-Safety code for excavation works to be adhered during earthwork activities.
- Methods of test for soils shall be as per IS: 2720 as applicable.
- Mechanical compaction at optimal moisture content and ramming to be done layer wise (maximum 200 mm thickness) with proper mechanical compaction and watering and to achieve required relative density as per the applicable IS Codes and specifications.

### **Landscaping & Rainwater harvesting**

- General landscaping shall be done as per SP 21:2005
- Rainwater storage and recharge is mandatory for all industries, warehouses and all buildings. Suitable provision shall be made for collection of water from roof top to the recharge pits
- Rainwater harvesting to be as per i) development control rules ii) environmental approval
- Rainwater harvesting works shall be done as per Rainwater Harvesting and Conservation Manual by Central Public Health and Environmental Engineering Organisation (CPHEEO).

### **UTILITIES**

#### **Electrical Distribution System**

- Design specification and selection of power cable as per IS 7098.
- Guideline for Cable Laying, installation testing commissioning as per IS 1255:1983.
- Earthing work is to be as per IS 3043:1987.
- Power transformer design and selection as per IS 2026:2010/2011/2018.
- IS 1180:2014/2021 is to be followed for outdoor distribution transformer.
- IS 10118:1982 to be followed for selection, installation & maintenance of switchgear and control gear.
- Underground electrical distribution system is to be implemented.
- All the Power Cable shall be laid directly buried in ground and in case of crossing HDPE pipe may be used.
- The detailed design documents/drawings are to be approved from State Electricity Board/Chief Electrical Inspector before execution.
- Generator backup supply for all essential equipment and facilities, to be provided

#### **Road lighting**

- The lighting shall comply with the standards, requirements, illumination level and specifications given in Indian Standard 'Code of Practice for Lighting of Public Throughfare' IS 1944 Part I & II:1970.
- Road lighting shall be designed with minimum illumination of 15 lux or NH standards for urban roads whichever is higher.
- GI Octagonal Poles and LED luminaries are to be considered for Road lighting system.

- Power supply to Road lighting pole is to be fed through underground 1.1 kV XLPE insulated, armored, Aluminum conductor cables. Distribution of power to be through 415V, 3 phase, 4 wire system.
- The streetlights shall be controlled from outdoor street light Panel with 4Pole MCCB incomer, energy meter, automatic timers switch and power contactor for switching ON/ OFF the lights and MCB outgoings for distribution.

#### **Data Networking**

- Ethernet IP networks as per IEEE 802.11 including both wireline and wireless components and redundancy for high reliability and availability shall be designed and maintained across the PM MITRA Park for data transmission between different equipment, control centres, administration and gate systems.
- Fast Ethernet/Ethernet Network –LAN and WAN cables as per ISO/IEC 8802-3:2021.
- A fiber backbone in ring structure shall be created to connect all buildings; all cables to be laid in redundancy mode.
- The network rack shall be as per the ISO 27001:2013 standards
- The IP address, the line feed shall be shared with Authority and the Independent Expert

#### **Telephone System**

- The telephone system shall conform to applicable ITU-T standards.
- Centralized Voice Mail System (CVMS) shall be provided, integrated with the switch to enable PABX users to leave, retrieve and broadcast voice messages to and from this single message centre.
- Provision of VHF radio/TETRA systems for field communications
- Provision of mobile telephones for field communications

#### **Closed Circuit Television**

- Closed-Circuit Television (CCTV) System with minimum 15 days data storage/recording backup shall be provided for video surveillance and recording function for the operators to monitor the entire PM MITRA Park Site.
- CCTV system as per Policy and Guidelines for setting up of Inland Container Depots (ICDs), Container Freight Stations (CFSs) and Air Freight Stations (AFSs) dated 05.11.2020 by CBIC, Ministry of Finance and as revised time to time
- Two types of cameras shall be provided:
  - Fixed cameras with fixed focal length lens and fixed orientation.
  - Pan/Tilt/Zoom (PTZ) cameras with variable focal length lens with adjustable orientation in both the vertical and horizontal directions.

#### **Public Address System & Video Conferencing System**

- The PA equipment shall be in accordance with IS 1881:1998
- All PA equipment shall be rack mounted.

#### **UPS & Battery Bank**

- UPS shall be compliance of Standards UL 2003 (MH26669), JIS C 8702, IEC 60896:2004, ISO14001:2015 and ISO9001.2015.

#### **Fire Fighting System**

- The firefighting system is to be designed in accordance with applicable IS codes and NBC.
- The design of the fire mains shall comply with the Local Fire Authorities' Regulations, NBC, IS Codes.

#### **Water Supply System**

- The water supply system shall be designed and constructed as per Central Public Health and Environmental Engineering Organisation (CPHEEO) "Manual on Water Supply and Treatment.

- The incoming water supplies and the system they supply shall be designed and constructed as per NBC.
- Distribution system for potable and recycled water shall comply with IS:4984:2016.
- Service water from storage tank to individual buildings by pumping system/gravity system, through buried HDPE pipeline & fittings.
- Pipes and fittings for water supply shall be High Density Polyethylene Pipes class PE100, PN10, confirming to IS 4984:2016. All water supply lines in road crossings shall be through RCC pipes.
- Gate valve shall be confirming to IS 14846:2000
- Air valve shall be confirming to IS 14845:2000
- Water Meter with NRV, Ferule and Strainer shall be confirming to IS 2373:1981/ ISO 4064-1:2014
- RCC Hume pipes class NP 3 (minimum), confirming to IS 458:2021
- Ball valve shall be confirming to IS 9890:1981

## **2. Supply, Installation, Commissioning/Calibration of equipment**

The Concessionaire shall undertake Supply, Installation, Testing, Commissioning/Calibration of equipment as per the standards of the original equipment manufacturer of such equipment.

## **3. Staffing and manpower training**

The Concessionaire shall conduct staff and manpower training for all the Services offered in the PM MITRA Park in regular intervals as per the schedule approved by Independent Expert.

## **II. Services**

Services shall be provided in conformity with Annex-I of this Schedule-D

## **III. Commercial Zone Development**

Commercial Zone Development shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-II of this Schedule, Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India, UK or USA, as the case may be.

## **IV. 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), Indian Standards, CPWD, MoRTH, IRC, Indian Railways Standards;
- (b) Relevant International Standards or codes as applicable in the United States of America or the European Union or Singapore or any other country providing equivalent facilities; 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.

#### 4. Equipment

The Concessionaire shall construct and/or install the Project equipment in accordance with the relevant Specifications and Standards and the manufacturer's guidelines for the equipment. All equipment to be procured shall be accompanied by relevant efficient energy usage certificate and/or emission under control certificate from relevant Authority. Equipment with stricter emission control shall be preferred even if the same over-satisfies the present Indian Emission Control norms.

All equipment handling loaded containers shall be capable of running on electric energy. All non-electric equipment shall meet the top world standard for emission control and fuel efficiency.

The Concessionaire shall deploy the best in class equipment for providing Services at the **PM MITRA PARK LUCKNOW** as per the international best practices

The following equipment may be deployed for achieving efficiencies in operations at **PM MITRA PARK LUCKNOW**:

- (i) Rail Mounted Quay Crane (RMQC),
- (ii) Rubber Tyre Gantry Crane (RTGC),
- (iii) Empty Container Handlers, such as
- (iv) Medium-duty forklift trucks;
- (v) Side-pick cranes;
- (vi) Top-pick cranes;
- (vii) Reach-stacker cranes.
- (viii) Tractor trailers,
- (ix) Internal Transfer Vehicles (ITV)
- (x) The equipment required for Storage of Perishables/Cold Storage
- (xi) The equipment related to valued added services like sorting, grading, cleaning,
- (xii) All ancillary equipment or any facility and equipment incidental or necessary for operation of the **PM MITRA PARK LUCKNOW**.
- (xiii) Weighbridges- The specifications for weigh bridges shall comply with guidelines given in IS: 1436:1991. Weighbridges shall conform to the provisions of the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Package Commodities) Rules, 1977 or any substitute thereof.

## **5. Specifications and Standards for PM MITRA PARK LUCKNOW Facility**

### **List of Standards as per Appendix-II**

[•]

[Note: To be finalized at the time of bidding documents finalization.]

[Note: The Authority shall describe all the Drawings that the Concessionaire is required to furnish under Clause 12.4 of the Concession Agreement.]

## **6. Warehousing Standards for PM MITRA PARK LUCKNOW**

1. Higher load bearing capacity for heavy industrial flooring having [G+9 or G+10] levels of industrial racking.
2. Standardised maintenance and serviceability program for flooring, related to flatness levels, shrinkage at joints, cracks above specified millimetres of size etc.
3. Detailed roofing standards providing for material with high solar reflective index, roof design with no leakage, permitting skylight illumination, provision of turbo-ventilators as applicable, floor to roof height for existing and future vertical expansion etc.
4. Security and sustainability practices.
5. Operational efficiency and quality enhancement through implementation of Warehouse Management Systems.

### **List of Standards as per Appendix-II**

1. Earth work in excavation in all types of soil for foundation up to depth as per structural design requirement.
2. Filling with mechanical compaction at required moisture content under grade slab with required relative density as per the applicable IS Codes.
3. Warehouses shall be designed and constructed as per guidelines of Central Warehousing Corporation or higher specifications.
4. All the warehouses are to be provided with suitable racking system as applicable for the commodity as Per Good Industry Practices.



## **Annex - I (Schedule-D)**

### **SERVICES – SPECIFICATIONS AND STANDARDS**

The Concessionaire shall undertake the Services in accordance with the following Specifications and Standards:

The Concessionaire including its representative/sublicensee shall ensure compliance as per best industry practices, as may become applicable from time to time including but not limited to the Specifications and Standards set forth herein for development, operation & maintenance of the PM MITRA Park Lucknow. This commitment also applies to the provision of various Services at the park, ensuring compliance with the industry's current best practices.

#### **Structure Development**

- The buildings shall be designed in conformance with National Building Code and Zonal regulations.
- RCC Structures shall be designed as per IS 456-2000
- Steel Structures shall be designed in accordance with the provision of IS 800:2007 Structural steel shall conform to IS 2062:2011. Tubular section shall conform to IS 4923:1997
- Architectural design norms as per NBC
- Structural design norms as per NBC and BIS
- Firefighting arrangement as per NBC
- Petrol pumps to comply with The Petroleum Rules 2002 and its subsequent amendment/(s) (2021).
- In case of Multi Level Car Parking (MLCP): -
- Proper ventilation to be provided for all parking floors.
- Adequate lighting system in parking facility area shall be provided to achieve the desired lux level for ramps, parking & pedestrian movement, for stairways, toilets, entrance and exit areas of parking. Lighting shall be as per SP 72:2010-National lighting Code.
- Adequate power back-up ensuring 100% of the designed power load of the parking facility shall be provided.
- The MLCP may have a parking tracking system based on sensors at entry/ exit boom-barriers to keep track of parking occupancy count.

#### **Logistics Services**

- ISO-15069-2018-Handling and securing — Rationale for ISO 3874, Annexes A to E
- Policy and Guidelines for setting up of Container Freight Stations (CFSs) dated 05.11.2020, by CBIC, Ministry of Finance and as revised time to time.
- ISO 21262-2020-Industrial trucks -Safety rules for application, operation and maintenance

#### **Value Added Services**

- ISO/TS 18625-2017-Freight containers -Container Tracking and Monitoring Systems (CTMS)
- ISO 26683-3- 2019-Intelligent transport systems
- ISO/IEC 27001-2018-Information technology -Security techniques -Information security management systems

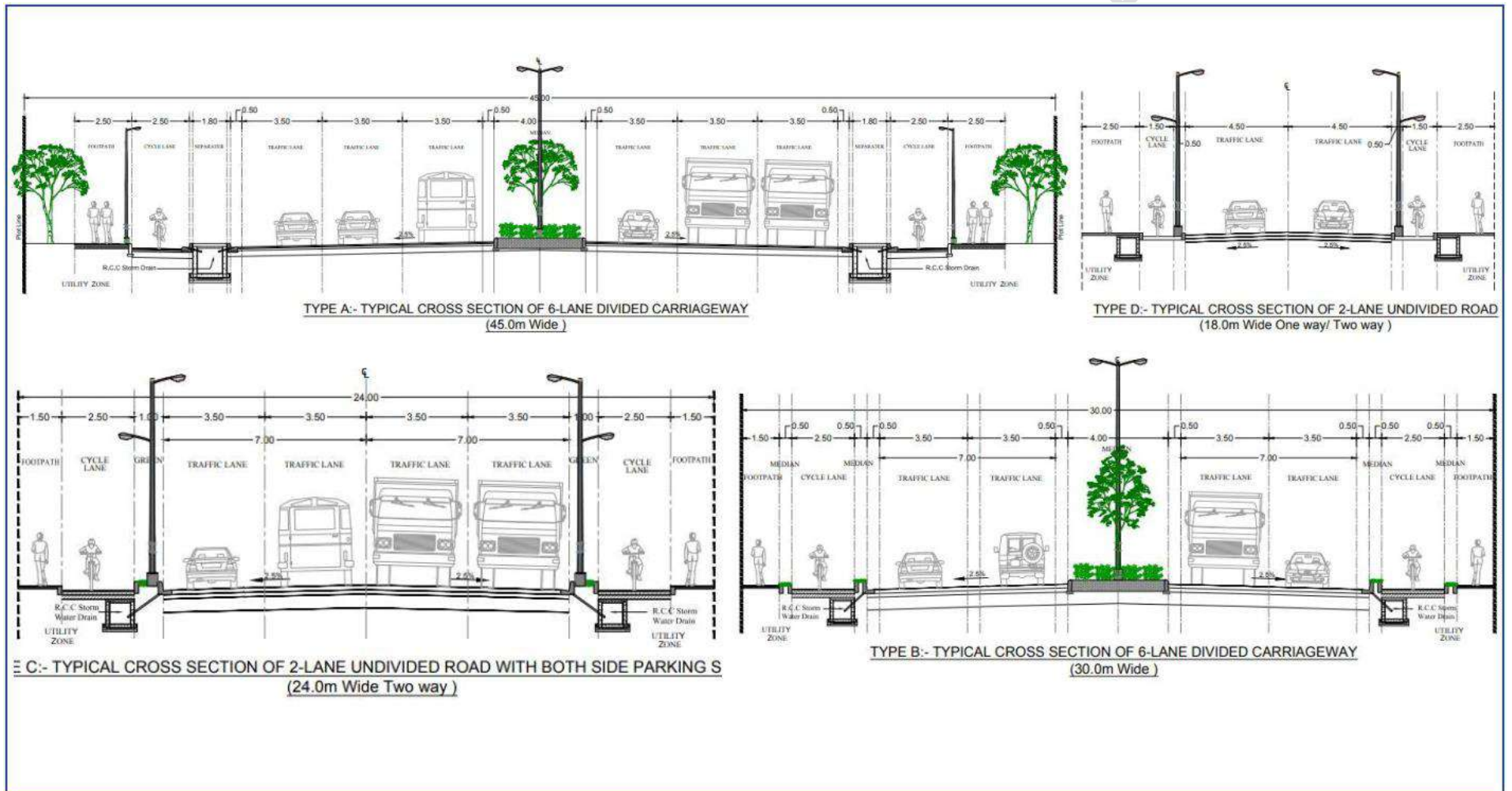
#### **Supporting Services**

- IRC: SP:12-2015-Guidelines for Parking facilities in Urban Areas

#### **General provisions**

- ISO 9001 2015-Quality management systems
- ISO 14001:2015-Environmental management systems
- ISO 22301:2019-Security and resilience-Business continuity management systems
- OHSAS 18001:2007

### Annex – III (Schedule-D) Typical Road Cross-Sections



For representative purposes only

**SCHEDULE E - APPLICABLE PERMITS  
PART I**

**1. Applicable Permits**

1.1 The Concessionaire shall obtain, as required under Applicable Laws, the PART A of the following Applicable Permits, as detailed under PART-A below, 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.

**PART A – PERMITS PRIOR TO APPOINTED DATE**

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

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

**PART B – PERMITS AND CLEARANCES REQUIRED UNDER APPLICABLE LAWS**

S. No.	Approval	Relevant Authority
1.	Layout Plan, Industrial Plots, Warehouse	Department of Town and Country Planning (Building Plan Approval Committee)
2.	Shop and establishment certificate	Shop and Establishment Department
3.	Building insurance	Any insurance company
4.	Structural Stability Certificate	Architect and Structural Engineer
5.	Gram Panchayat no objection certificate	Local Village Pradhan
6.	Weighment License	Weights and Measures Department
7.	Department Permission Certificate	District Town Planner
8.	Structure Design	Structural Engineer
9.	Rainwater harvesting	Central Ground Water Authority
10.	Storage of Hazardous Goods	Chief Controller of Explosives and Ministry of Environment
11.	Setback and height specification	Department of Town and Country Planning (Building Plan Approval Committee)
12.	Fire No Objection Certificate	State Fire Department
13.	Water level monitoring	Central Ground Water Authority
14.	Approval for hazardous materials (if any)	As per the requirement/ Pollution Department
15.	Weight and measures (100 T weighbridge)	State Weight and Measurement Department
16.	Factory License – DTA	State Government
17.	Registration Certificate of shop or commercial establishment – DTA	State Government

	warehouse	
18.	Environmental Monitoring Report	Noise, water, air assessment state department
19.	Environmental statement (Form V) Audit report	Noise, water, air assessment, state department
20.	Permission for engaging contract labour	State Labour Commissioner
21.	Electric load sanction and connection	State Power Board
22.	Electricity Supply	State DISCOM

Draft Concession Agreement

## SCHEDULE F – PERFORMANCE SECURITY

To,  
The Chief Executive Officer,  
PM MITRA Park Uttar Pradesh Limited,  
Niryat Bhawan, Kaiserbagh, Lucknow

### WHEREAS:

- (A) [•] (the “Concessionaire”) and the **PM MITRA PARK UTTAR PRADESH LIMITED** (“Authority”) have entered into a Concession Agreement dated [•] (the “Agreement”) whereby the Authority has resolved to establish a PM Mitra Park at Lucknow in districts Lucknow and Hardoi in the State of Uttar Pradesh 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 [84 Crore] (Rupees [Eighty Four Crore Only]) of the Total Project Cost assessed by the Authority mentioned in the Agreement) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, 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 during the Construction Period, under and in accordance with the provisions of the Agreement, on its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the Authority, under the hand of its authorized representative, that the Concessionaire has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the Authority shall be the sole judge as to whether the Concessionaire is in default in due and faithful performance of its obligations during the Construction Period under the Agreement and its decision that the Concessionaire is in default shall be final, and binding on the Bank, notwithstanding any differences between the Authority and the Concessionaire, or any dispute between them pending before any court, tribunal, arbitrators or any other Authority or body, or by the discharge of the Concessionaire for any reason whatsoever.
3. In order to give effect to this Guarantee, the Authority shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Concessionaire and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Bank its demand under this Guarantee.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the

rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the Concessionaire or any other forbearance, indulgence, act or omission on the part of the Authority or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.

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

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

**SIGNED, SEALED AND DELIVERED**

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

(Signature)

(Name);

(Designation);

(Code Number);

(Address)

**NOTES:**

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

Draft Concession Agreement

**Annexure I of Schedule F**

(See Clauses 9.1)

**FORM OF SURETY BOND**

**[Performance Security/Additional Performance Security]**

To,  
The Chief Executive Officer,  
PM MITRA Park Uttar Pradesh Limited,  
Niryat Bhawan, Kaiserbagh, Lucknow

**WHEREAS:**

- (A) [•] (the "Concessionaire") and the **PM MITRA PARK UTTAR PRADESH LIMITED** ("Authority") have entered into a Concession Agreement dated [•] (the "Agreement") whereby the Authority has resolved to establish a PM Mitra Park at [Lucknow] in district [Lucknow and Hardoi] in the State of [Uttar Pradesh] 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 Rs 84 Crore (Rupees Eighty Four Crore only) (the "Surety Bond 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 "Surety Insurer") have agreed to furnish this Surety Bond by way of Performance security.

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

1. The Surety Insurer hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire's obligations during the Construction Period under and in accordance with the Agreement, and agrees and undertakes to pay to the Authority, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Concessionaire, such sum or sums up to an aggregate sum of the Surety Bond 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 \_\_\_\_\_ in the \_\_\_\_\_, 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 Surety Insurer. The Surety Insurer 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 Surety Insurer, 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 Contractor for any reason whatsoever.
3. In order to give effect to this Surety Bond, the Authority shall be entitled to act as if the Surety Insurer were the principal debtor and any change in the constitution of the Concessionaire and/or the Surety Insurer, 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 Surety Insurer under this Surety Bond.
4. It shall not be necessary, and the Surety Insurer hereby waives any necessity, for the Authority to proceed against the Concessionaire before presenting to the Surety Insurer its demand under this Surety Bond.
5. The Authority shall have the liberty, without affecting in any manner the liability of the Surety Insurer under this Surety Bond, to vary at any time, the terms and conditions of the Agreement or to extend the



time or period for the compliance with, fulfillment and/ or performance of all or any of the obligations of the Concessionaire contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the Authority against the Concessionaire, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the Authority, and the Surety Insurer 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 Surety Insurer from its liability and obligation under this Surety Bond and the Surety Insurer hereby waives all of its rights under any such law.

6. This Surety Bond is in addition to and not in substitution of any other Surety Bond or security now or which may hereafter be held by the Authority in respect of or relating to the Agreement or for the fulfillment, compliance and/or performance of all or any of the obligations of the Concessionaire under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Surety Insurer under this Surety Bond is restricted to the Surety Bond Amount and this Surety Bond will remain in force until the following 180 days from COD or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Surety Insurer under this Surety Bond, no later than 6 (six) months from the date of expiry of this Surety Bond, all rights of the Authority under this Surety Bond shall be forfeited and the Surety Insurer shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Concessionaire shall have expended on Project construction an aggregate sum not less than 100% (Hundred per cent) of the Bid Project cost which is deemed to be Rs. \*\* cr. (Rupees \*\*\* crore) for the purposes of this Surety Bond, and provided the Concessionaire is not in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Concessionaire, the Authority, shall release the Performance Security forthwith.
9. The Surety Insurer undertakes not to revoke this Surety Bond 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 Surety Bond and the undersigned has full powers to do so on behalf of the Surety Insurer.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Surety Insurer at its above referred branch, which shall be deemed to have been duly authorized to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the Authority that the envelope was so posted shall be conclusive.
11. This Surety Bond shall come into force with immediate effect and shall remain in force and effect for a period of one year and six months or until it is released earlier by the Authority pursuant to the provisions of the Agreement.

Signed and sealed this..... Day of ..... 20.....at.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the surety insurer by:

(Signature)

(Name)

(Address)

(Designation)

(Code Number)

Notes:

- (i) The Surety Bond Should contain the name, designation and code number of the office(s) signing the bond.
- (ii) The address, telephone number and other details of the Head Office of the Surety Insurer as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.

Draft Concession Agreement

## **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. The development of PM MITRA Lucknow Park is having a total area of the Site for development of PM MITRA Lucknow Park is 1000 acres.

### **2. Project Milestone-I**

- 2.1 Project Milestone-I shall occur on the date falling on the 365<sup>th</sup> (three hundred and sixty fifth) 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 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.
- 2.3 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced development of the Project and leased out not less than 10% (ten 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.

### **3. Project Milestone-II**

- 3.1 Project Milestone-II shall occur on the date falling on the 730<sup>th</sup> (Seven Hundred and Thirtieth) day from the Appointed Date (the "Project Milestone-II").
- 3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced development of the Project and expended not less than 20% (twenty 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.
- 3.3 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced development of the Project and leased out not less than 20% (twenty 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.

### **4. Project Milestone-III**

- 4.1 Project Milestone-II shall occur on the date falling on the 1095<sup>th</sup> (One Thousand and ninety fifth) day from the Appointed Date (the "Project Milestone-III").
- 4.2 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced development of the Project and expended not less than 40% (forty 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.
- 4.3 Prior to the occurrence of Project Milestone-III, the Concessionaire shall have commenced development of the Project and leased out not less than 40% (forty 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.

#### **5. Project Milestone-IV**

- 4.4 Project Milestone-IV shall occur on the date falling on the 1460<sup>th</sup> (One Thousand four hundred and sixtieth) day from the Appointed Date (the "Project Milestone-IV").
- 4.5 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced development of the Project and expended not less than 60% (sixty 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.
- 4.6 Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have commenced development of the Project and leased out not less than 60% (sixty 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.

#### **6. Project Milestone-V**

- 4.7 Project Milestone-V shall occur on the date falling on the 1825<sup>th</sup> (One Thousand eight hundred and twenty fifth) day from the Appointed Date (the "Project Milestone-V").
- 4.8 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced development of the Project and expended not less than 80% (eighty 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.
- 4.9 Prior to the occurrence of Project Milestone-V, the Concessionaire shall have commenced development of the Project and leased out not less than 80% (eighty 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.

#### **7. Scheduled Completion Date**

- 5.1 The Scheduled Completion Date shall be 2190<sup>th</sup> (two thousand one hundred and ninetieth) day from the Appointed Date.
- 5.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Construction Works in accordance with this Agreement.

#### **8. 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**

### **1. Drawings**

In compliance of the obligations set forth in Clause 12.4 of this Agreement, the Concessionaire shall furnish to the Independent Expert and Authority, free of cost, all Drawings related to PM MITRA Park

### **2. Additional drawings**

If the Independent Expert determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed herein, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Expert.

Draft Concession Agreement

## **SCHEDULE I - TESTS**

### **1. Schedule for Tests**

- 1.1. The Concessionaire shall, no later than 90 (ninety) days prior to the likely completion of the Project Facility, notify the Independent Expert and the Authority of its intent to subject the Project Facility to Tests, and no later than 15 (fifteen) days prior to the actual date of Tests, furnish to the Independent Expert and the Authority detailed inventory and particulars of all works and equipment forming part of the Project Facility.
- 1.2. The Concessionaire shall notify the Independent Expert of its readiness to subject the Project Facility to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Expert shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Expert shall thereupon conduct, or cause to be conducted, any of the following Tests in accordance with Article 14 and this Schedule-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.

#### 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-B and Schedule D

#### 2.5 Tests for PM MITRA Park:

The Independent Expert shall conduct or cause to be conducted Tests for determining the compliance of the PM MITRA Park 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/ Provisional Certificate**

Upon successful completion of Tests, the Independent Expert shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.

**6. Tests during construction**

Without prejudice to the provisions of this Schedule-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 Services to Users.
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)

Draft Concession Agreement



**PROVISIONAL 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 undertaken to determine compliance of the Project with the provisions of the Agreement.
  
2. Construction Works that were found to be incomplete and/or deficient have been specified in the Punch List appended hereto, and the Concessionaire has agreed and accepted that it shall complete and/or rectify all such works in the time and manner set forth in the Agreement. [Some of the incomplete works have been delayed as a result of reasons attributable to the Authority or due to Force Majeure and the Provisional Certificate cannot be withheld on this account. Though the remaining incomplete works have been delayed as a result of reasons attributable to the Concessionaire,]18 I am satisfied that having regard to the nature and extent of such incomplete works, it would not be prudent to withhold commercial operation of the Project, pending completion thereof.
  
3. In view of the foregoing, I am satisfied that the Project can safely and reliably provide Services to Users, and in terms of the Agreement, the Project is hereby provisionally declared fit for entry into commercial operation on this the [•] day of [•] 20[•].

ACCEPTED, SIGNED, SEALED AND  
DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

**INDEPENDENT EXPERT** by:

(Signature)  
(Name and Designation)  
(Address)

**CONCESSIONAIRE** by:

(Signature)  
(Name and Designation)  
(Address)

## **SCHEDULE K - MAINTENANCE MANUAL, SERVICE MAINTENANCE REQUIREMENTS**

[Note: The Maintenance Manual, Service Quality Manual and Maintenance Requirement for the PM Mitra Park Lucknow as provided by the Authority or other authorized agency to be specified in this Schedule-K]

### **1. Service Requirements**

- 2.1. The Concessionaire shall adhere to Good Industry Practices for maintaining Service quality and shall maintain up to date certifications of industry best practices and standards for Service quality, as may be applicable from time to time during the Concession Period.
- 2.2. Further, Concessionaire shall develop and submit a Service quality manual, in reference to Annex -I of this Schedule-K, to the Independent Expert laying down processes and procedures related to the quality assurance of Services offered to Users of PM MITRA Park.

### **2. Maintenance Requirements**

- 2.3. 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.
- 2.4. 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 17.8 of the Agreement, without prejudice to the rights of the Authority under the Agreement, including Termination thereof.

#### **Repair/rectification of defects and deficiencies**

- 2.5. The obligations of the Concessionaire in respect of Maintenance Requirements shall include repair and rectification of the defects and deficiencies of Project Assets in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.
- 2.6. The Concessionaire shall furnish the Maintenance Manual to the Independent Expert in reference to but not limited to the following standards:
  - Building maintenance as per CPWD Maintenance Manual-2019.
  - Equipment maintenance as per Good Industry Practices. Equipment fitness certificates are to be submitted to the Independent Expert.
  - Maintenance history book is to be maintained for all the equipment.
  - Maintenance for rigid pavement as per IRC: SP: 83:2018
  - Maintenance for flexible pavement as per IRC: SP: 82: 2015
  - Maintenance for interlocking concrete block pavement as per IRC: SP: 63:2018.
  - Road Lighting maintenance as per IS: 1944:1970/1981.
  - Firefighting system-Maintenance of Piping systems as per maintenance manual by CPHEEO and fire hydrants as per NBC.
  - Fire safety extinguishers maintenance as per IS 2190:2010 & IS 1648:1961.
  - Water supply, Sewerage and storm water drainage system maintenance shall be as per CPHEEO - “Manual on Operation & Maintenance of water supply”, “Manual on Sewerage and Sewage Treatment Systems Part B Operation & Maintenance”, “Manual on Storm Water Drainage System- Volume II-Part B: Operation & Maintenance” and IS 2065 :1983.
  - Painting works as per IS 2395:1994.

- The Concessionaire shall use all possible and updated technology in sanitation, solid waste management and disposal and rainwater harvesting for better upkeep and maintaining the best hygienic conditions in the PM Mitra Park.

Draft Concession Agreement

The Maintenance Manual shall cover all the activities required for maintenance of all the Project Assets. A reference of various activities and their prescribed maintenance frequency is provided below:

S. No.	Activity	Frequency
<b>Road</b>		
1	Sweeping/cleaning of platforms	At least daily & as and when required
2	Sweeping/Cleaning of roads and pavements including concrete /bituminous surface, pavement/ circulating area, kerb stone etc.	At least daily & as and when required
4	Damage of pavement	Damage to the edge of the pavement to be repaired within 7 days Partial repair to be completed within 15 days. Complete repair to be completed within 30 days
<b>Compound Wall</b>		
1	Damage to the Compound Wall	To be permanently rectified within 3 days of detection of breach. In case of any opening, the same should be closed at least by temporary means immediately after notice of the same.
2	Painting of Compound Wall	At least once in 5 years.
<b>Landscaping Areas</b>		
1	Watering of landscaped areas to be done with proper permanent water supply arrangements like sprinklers etc.	At least once daily/As per requirement
2	Damaged trees and bushes	To be replaced within 3 days and in case of any hinderance to traffic or pedestrian movement, the same is to be cleared immediately.
3	Obstructions caused by landscaping obstructing the minimum headroom of 5 m above the driveway or obstructing the visibility of road signs	To be removed within 1 day
<b>Wet Utilities</b>		
1	Damage to related to water supply	Restoration through temporary measures within 4 hours Restoration through permanent measures within 3 days.
2	Damage of drainage system	Restoration through temporary measures within 4 hours Restoration through permanent measures within 1 day
3	Damage of sanitary installations	Leakages to be repaired within 24 hours Damage to septic tank to be repaired within 1 day after detection
4	Damage to rainwater harvesting system	Restoration through temporary measures within 1 days Restoration through permanent measures within 7 days Periodically desilting and particularly prior to pre-monsoon & monsoon
<b>CETP</b>		
1	Functioning of Common Effluent Treatment Plant / Sewage Treatment Plant	Replacement/restoration through temporary measure within 12 hours. Restoration through permanent measure within 5 days
<b>Solid Waste Management</b>		
1	Refuse or solid waste to be disposed of to the secondary collection centres or designated disposal sites	Daily
<b>Electrical Utilities</b>		

1	Functioning of power supply, electrical installations and electrical equipment for buildings and external	Power supply to common areas to be restored within 30 seconds during the night and within 5 minutes during the day, in the event of a power shortage, using the DG set. 24 hours back up is required for cold storage as well as common operating areas. Safety audit as per requirement / once in a year whichever is minimum
2	Electrical fittings like bulbs, lamp shades, wiring etc. to be operational at all times	Replacement/restoration through temporary measure within 4 hours Restoration through permanent measure within 2 days
3	Damage to internal lighting (Illumination of PM MITRA Park)	Restoration through temporary measures within 4 hours Restoration through permanent measures within 2 days Lighting level falling below the Standards and Specifications to be rectified within 4 hours
4	Damage to exterior lighting	Faults and minor failures to be repaired within 4 hours Any major failure of the system to be repaired within 1 day
5	Safety audit	At least once in a year.
<b>Telecom, Data, PA &amp; CCTV System</b>		
1	Telecommunication and networking system including WiFi	Restoration through temporary measures within 6 hours Restoration through permanent measures within 3 days
2	Functioning of public address system	Restoration through temporary measure within 1 hour Restoration through permanent measure within 2 days
3	Damage to CCTV & security system	To be repaired within 7 days
<b>Other Services</b>		
1	Functioning of Air Conditioning (HVAC) System	Temporary repair and rectification within 8 hours Permanent repair and rectification within 2 days
<b>Fire Fighting System</b>		
1	Cleaning of firefighting equipment including portable fire extinguishers, smoke detectors / fire detectors, fire pump panels, valves, hydrants, piping of all types etc.	At least once in a fortnight & as and when required
2	Check working of fire extinguishers including powder checking	At least once in every 3 months
3	Check working and functioning of automatic analogous addressable fire detection, fire alarm, and firefighting system periodically	At least once in every 3 months
4	Replacement of fire extinguisher	Prior to the expiry date or once in every 3 years whichever is minimum.
5	Defective or damaged fire-fighting Equipment	Defective detectors to be replaced within 1 day.
6	Fire mock drill	Every month/as per requirement of Chief Fire officers of area in which PM MITRA Park is located whichever is minimum.
7	Safety audit	At least once in a year.
<b>Miscellaneous</b>		
1	Regular pest and rodent control treatment for all buildings and landscaped areas	At least once every month

2	Cleaning of any other equipment/Misc. items	As and when required
---	---	----------------------

- 2.7. The Concessionaire shall at all times maintain an adequate inventory of spares and consumables to meet the Maintenance Requirements.
- 2.8. In respect of any defect or deficiency, the Independent Expert may, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards, and any deviation or deterioration beyond the permissible limit shall be repaired or rectified by the Concessionaire in accordance with Good Industry Practice and within the time limit specified by the Independent Expert.

**Extension of time limit.**

- 2.9. 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**

- 2.10. 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**

- 2.11. 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**

- 2.12. 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**

- 2.13. The Concessionaire shall display a copy of this Schedule-K at the Project Facility along with the Complaint Register stipulated in Clause 43.1.

## **Annex – I (Schedule-K) - SERVICE QUALITY MANUAL**

The Concessionaire shall furnish the Service Quality Manual for all the Services undertaken under Schedule C of this Agreement but not limited to the major Services to the Independent Expert:

- i. Industrial Plots and Warehouses
- ii. Logistics Services
- iii. Value Added Services
- iv. Supporting Services
- v. Security Services
- vi. Other Services as prescribed by the Authority

The Service Quality Manual shall adhere to ISO 9001:2015-Quality management systems which shall include, but not limited to the following:

- i. Customer focus
- ii. Leadership
- iii. Involvement of people
- iv. Process approach
- v. System approach to management
- vi. Continuous improvement
- vii. Factual approach to decision making
- viii. Mutually beneficial supplier relationships

The Service Quality Manual shall be revised on an annual basis based on the quantum and type of the Services at the PM Mitra Park and as approved by the Independent Expert.

## **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) Manuals, if any, issued by the Authority or any Designated GOI Agency;
- (d) Relevant Standards/Guidelines contained in internationally accepted codes; and
- (e) Good Industry Practice.

### **3. Appointment of Safety Consultant**

- 3.1 For carrying out safety audit of the Project Facility under and in accordance with this Schedule L, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the "Safety Consultant"). The Safety Consultant shall employ a team comprising, without limitation, one safety expert and one logistics services expert to undertake safety audit of the Project Facility.
- 3.2 Once in every Accounting Year, a safety audit shall be carried out by the Safety Consultant. It shall review, compile, and analyse the annual report and accident data of the preceding year, and undertake an inspection of the Project Facility. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a safety report (the "Safety Report") recommending specific improvements, if any, required to be made to the Project Facility. The Safety Report shall be submitted to the Authority in 5 (five) copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Expert forthwith.

### **4. Safety measures during Operation Period**

- 4.1 The Concessionaire shall develop, implement and administer a safety programme for the Project Facility, staff, Users and persons, and property belonging to the Users, which shall include correction of safety violations and deficiencies, and all other actions necessary to provide a safe environment in accordance with this Agreement.
- 4.2 The Concessionaire shall keep a copy of every first information report recorded by the Police / or details of the accidents resulting equipment malfunctions or failure or human error with respect to any accident occurring on or about the Project Facility. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised and submitted to the Authority at the conclusion of every quarter.



4.3 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in three copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 4.1 of this Schedule-L for averting or minimising such accidents in future.

4.4 Once in every Accounting Year, the Authority shall cause a safety audit to be carried out for review and analysis of the annual report and accident data of the preceding year. The recommendations of such safety audit shall be communicated to the Concessionaire and the Independent Expert. Within 15 (fifteen) days of receipt of such communication from the Authority, the Concessionaire and the Independent Expert shall send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same and by notice direct the Concessionaire to carry out any or all of the recommendations with such modifications as the Authority may specify.

**5. Costs and expenses**

Costs and expenses incurred in connection with the Safety Requirements set forth herein, including the provisions of Paragraph 2 of this Schedule-L, shall be borne by the Concessionaire.

Draft Concession Agreement

## **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 and subsequently prior to completion of the Project. 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 and subsequently prior to completion of the Project.

#### **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 and subsequently prior to completion of the Project, 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 and subsequently prior to completion of the Project.

#### **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 Concession Period, the Authority shall endeavour that payments to the Independent Expert on account of fee and expenses do not exceed 2% (two per cent) of the Total Project Cost, including Equity Support. Payments not exceeding such 2% (two per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.
- 3.2 The nature and quantum of duties and services to be performed by the Independent Expert during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Expert on account of fee and expenses during the Operation Period shall be borne equally by the Authority and the Concessionaire.

### **4. Selection every Five years**

No later than 5 (five) years from the date of appointment of Independent Expert pursuant to the provisions of Paragraph 1 of this **Schedule-M**, and every 5 (five) 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**”) to establish a PM MITRA Mega Textile and Apparel Park (“PM Mitra Park”) at [Lucknow] in district [Lucknow and Hardoi] in the State of [Uttar Pradesh] on Design, Build, Finance, Operate and Transfer (“**DBFOT**”)basis, [and a copy of which is annexed hereto and marked as Annex-I to form part of this TOR].
- 1.2 This TOR shall apply to construction, designing, operation and maintenance of the Project Facility.

### 2. Definitions and interpretation

- 2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Agreement shall apply, *mutatis mutandis*, to this TOR.

### 3. Role and functions of the Independent Expert

- 3.1 The role and functions of the Independent Expert shall include the following:
- (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 Certificate/ Provisional Certificate 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 it its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.
- 4.2 The Independent Expert shall review any Drawings or modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days (or such other shorter period, if any, as specified in the Agreement) of receiving such Drawings or Documents.
- 4.3 The Independent Expert shall review the business plan, detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.4 The Independent Expert shall review the detailed design and the manufacturing, installation, testing and commissioning plans for the Project Facility sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
- 4.5 Upon reference by the Authority, the Independent Expert shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Project Facility, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.
- 4.6 The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 4.7 The Independent Expert shall inspect the Construction Works and equipment (if any) once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20<sup>th</sup> (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 inside PM MITRA Park 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 PM MITRA Park 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 or Provisional Certificate. For carrying out its

functions under this Paragraph 4.17 and all matters incidental thereto, the Independent Expert shall act under and in accordance with the provisions of Article 14 and **Schedule-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, Documents and Safety Report received by the Independent Expert for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
- 5.2 The Independent Expert shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.
- 5.3 The Independent Expert shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.4 The Independent Expert shall conduct audits to determine the performance of the Concessionaire for and in respect of the Key Performance Indicators in accordance with the terms of the Concession Agreement.
- 5.5 The Independent Expert shall ensure periodic calibration of equipment as well as periodic check of all scientific testing equipment.
- 5.6 The Independent Expert shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
- 5.7 The Independent Expert shall assess the amount of Damages, if any, payable or recoverable, as the casemay be, under Clause 25.4 and notify the Concessionaire and the Authority of such amounts, in accordance with the terms of the Concession Agreement.
- 5.8 The Independent Expert shall inspect the PM MITRA Park Facility, at least once every month, preferably after receipt of the last status report in the relevant quarter from the Concessionaire, but before the 20<sup>th</sup> (twentieth) day after the close of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance 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.
- 5.9 The Independent Expert may inspect the Project Facility more than once in a month, if any lapses, defects, or deficiencies require such inspections.

- 5.10 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.
- 5.11 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.
- 5.12 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.
- 5.13 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 17.7.
- 5.14 The Independent Expert shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.
- 5.15 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 35.1 and, if required, cause tests to be carried out at the Concessionaire's cost for determining such compliance. If the Independent Expert determines that the status of the Project Facility is such that its repair and rectification would require a larger amount than the sum set forth in Clause 36.2, 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 36, 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**

The Independent Expert shall determine the costs, and/or their reasonableness, that are required



to be determined by it under the Agreement.

- 7.1 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. 2 (two) copies of the said documents shall also be furnished in their editable digital format or in such other medium or manner as may be acceptable to the Authority.
- 10.6 Wherever no period has been specified for delivery of services by the Independent Expert, the Independent Expert shall act with the efficiency and urgency necessary for discharging its functions in accordance with Good Industry Practice.
- 10.7 The terms of reference may also include other roles and responsibilities of the Independent Expert as decided by the Authority on case to case basis while issuing the RFP for Independent Expert.

**SCHEDULE O - MONTHLY FEE STATEMENT**

Table 1

Type and purpose of fee	For corresponding month of previous Year			For preceding month			For the month reported upon		
	Amount of land leased out (Acres)	Total amount of land leased out (Acres)	Fee collected (in Rs.)	Amount of land leased out (Acres)	Total amount of land leased out (Acres)	Fee collected (in Rs.)	Amount of land leased out (Acres)	Total amount of land leased out (Acres)	Fee collected (in Rs.)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Manufacturing Units									
Common utilities and Infrastructure									
Specialised Activities									
Logistics zone									
Subsidized housing & associated social infra									
<b>Total</b>									

## **SCHEDULE P - SCHEDULE OF FEE**

### **1. Leasing of land**

- 1.1 The Concessionaire or its authorized representative shall be entitled to lease out developed land to players in textile sectors as per market economics. However; the Concessionaire will abide by the clauses provided in Schedule O.
- 1.2 The Concessionaire or its authorized representative shall be entitled to lease out developed land for other services as per the guidelines provided in Schedule O.

### **2. Levy and collection of Fee**

The Concessionaire or its authorized representative shall be entitled to levy and collect Fee from Users as per market economics. Indicative fees applicable for various services are specified in this Schedule- P, subject to the general principles and terms and conditions specified herein.

Draft Concession Agreement

## SCHEDULE Q – MINIMUM GUARANTEED REVENUE SHARE

As per the Article 25, the Concessionaire shall pay to the Authority each year a Concession Fee including Revenue Share such that:

- (a) The sum of present value on “XNPV” basis<sup>25</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 05<sup>th</sup> (fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 1 (“**Check Point 1**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [10%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (b) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 10<sup>th</sup> (tenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 2 (“**Check Point 2**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [22%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (c) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 15<sup>th</sup> (fifteenth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 3 (“**Check Point 3**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [35%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (d) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 20<sup>th</sup> (twentieth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 4 (“**Check Point 4**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [50%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (e) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 25<sup>th</sup> (twenty-fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 5 (“**Check Point 5**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [64%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (f) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 30<sup>th</sup> (thirtieth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 6 (“**Check Point 6**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [77%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (g) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 35<sup>th</sup> (thirty-fifth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 7 (“**Check Point 7**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [88%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (h) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 40<sup>th</sup> (fortieth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 8 (“**Check Point 8**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [97%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and
- (i) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 45<sup>th</sup> (forty five) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 9 (“**Check Point 9**”), and to ensure the

---

<sup>25</sup>. The ‘present value on “XNPV” basis’ of the Revenue Share shall be determined as per stipulations of Clause 25.4 of this Agreement.

compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [97%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and

- (j) The sum of present value on “XNPV” basis<sup>35</sup> of the Revenue Share payable to the Authority, commencing from the month falling immediately after the Appointed Date to the 49<sup>th</sup> (forty ninth) year (Accounting Year) from the Appointed Date, herein referred to as Check Point 10 (“**Check Point 10**”), and to ensure the compliance of Clause 25.4, shall be minimum INR [ . ] which shall not be less than [97%] of the Minimum Guaranteed Revenue Share quoted by the Concessionaire and

In case, the Concession Period is extended and such extension occurs solely and purely as a result of default attributable to the Authority under the terms of this Concession Agreement, the Check Points stipulated above shall be increased in the same proportion as the extension of Concession Period granted to the Concessionaire.

*Illustration: In case the Concessionaire is provided an extension of Concession Period by 1 year between the COD and the 5th anniversary from the Appointed Date, then the stipulated requirement for check on Revenue Share payments made to the Authority by the Concessionaire in the 5<sup>th</sup> year shall be increased by 1 year. i.e. “the cumulative sum of present value of Revenue Share on “XNPV” basis payable by the Concessionaire from the month falling immediately after the COD to the 5th (fifth) year from the Appointed Date” shall be changed to “the cumulative sum of present value of Revenue Share on “XNPV” basis payable by the Concessionaire from the month falling immediately after the COD to the 6th (sixth) year from the Appointed Date”. Consequently, the stipulated requirement for check on Revenue Share payments made to the Authority by the Concessionaire till the 10<sup>th</sup> year of Appointed Date shall be increased by one year to 11<sup>th</sup> year of Appointed Date and so on.*

**Illustrative Example for Minimum Guaranteed Revenue Share.**

1. The Bidder shall quote the Minimum Guaranteed Revenue Share in XNPV basis.
2. The XNPV shall be calculated @ discounting rate of [7 (seven)] % per annum and shall be discounted upto the Appointed Date for both Minimum Guaranteed Revenue Share and all Check Points.
3. The Revenue Share shall be payable from the calendar month falling immediately after the COD.
4. The Revenue Share payment shall be done on quarterly basis.
5. If the bidder would pay Revenue Share payment quarterly as X1, X2, X3, .....Xn in the required period and the XNPV of X1, X2, X3, .....Xn is "X".
6. The Highest Bidder shall be decided based on the value of "X".
7. In case the XNPV of Revenue Share till Check Point 1 is "A", the value of "A" shall be greater than or equal to [10%] of "X".
8. In case the XNPV of Revenue Share till Check Point 2 is "B", the value of "B" shall be greater than or equal to [22%] of "X".
9. In case the XNPV of Revenue Share till Check Point 3 is "C", the value of "C" shall be greater than or equal to [35%] of "X".
10. In case the XNPV of Revenue Share till Check Point 4 is "D", the value of "D" shall be greater than or equal to [50%] of "X".
11. In case the XNPV of Revenue Share till Check Point 5 is "E", the value of "E" shall be greater than or equal to [64%] of "X".
12. In case the XNPV of Revenue Share till Check Point 6 is "F", the value of "F" shall be greater than or equal to [77%] of "X".
13. In case the XNPV of Revenue Share till Check Point 7 is "G", the value of "G" shall be greater than or equal to [88%] of "X".
14. In case the XNPV of Revenue Share till Check Point 8 is "H", the value of "H" shall be greater than or equal to [97%] of "X".

## SCHEDULE R – ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the [•] day of [•] 20 [•]

### AMONGST

1. [•], a company incorporated under the provisions of the [•] and having its registered office at..... (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors, permitted assigns and substitutes);
2. [•] (insert name and particulars of Lenders’ Representative) and having its registered office at..... and acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);
3. [•] (insert name and particulars of the Escrow Bank) and having its registered office at..... (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted substitutes); and
4. **THE** [•], 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).

(a) **WHEREAS:**

- (A) The Authority has entered into a Concession Agreement dated [•] with the Concessionaire (the “**Concession Agreement**”) for development and Operation/Maintenance of [PM MITRA Mega Textile and Apparel Park] at [Lucknow] in districts [Lucknow and Hardoi] in the State of [Uttar Pradesh] (“**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 forthin 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 forthin 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 subaccounts and paid out therefrom on the Payment Date(s).

## **1.2 Interpretation**

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

## **2. ESCROW ACCOUNT**

### **2.1 Escrow Bank to act as trustee**

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

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the Authority, the Lenders’ Representative



and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than the Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third-party beneficiaries under this Agreement.

## **2.2 Acceptance of Escrow Bank**

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

## **2.3 Establishment and operation of Escrow Account**

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the [•] (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

## **2.4 Escrow Bank's fee**

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

## **2.5 Rights of the Parties**

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

## **2.6 Substitution of the Concessionaire**

The Parties hereto acknowledge and agree that upon substitution of the Concessionaire with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Concessionaire under this Agreement on and with effect from the date of substitution of the Concessionaire with the Nominated Company.

### **3. DEPOSITS INTO ESCROW ACCOUNT**

#### **3.1 Deposits by the Concessionaire**

3.1.1 The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- (a) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and the Authority;
- (b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- (c) all Fee and any other revenues from or in respect of the Project, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and
- (d) all payments by the Authority, after deduction of any outstanding Concession Fee.
- (e) The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

#### **3.2 Deposits by the Authority**

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- (a) Any other monies disbursed by the Authority to the Concessionaire;
- (b) All Fee collected by the Authority in exercise of its rights under the Concession Agreement; and
- (c) Termination Payments.

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire under the Concession Agreement, and the balance remaining shall be deposited into the Escrow Account.

#### **3.3 Deposits by Senior Lenders**

The Lenders' Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.

#### **3.4 Interest on deposits**

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

### **4. WITHDRAWALS FROM ESCROW ACCOUNT**

#### **4.1 Withdrawals during Concession Period**

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders' Representative and

the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

- 4.1.2 all taxes due and payable by the Concessionaire for and in respect of the Project;
- 4.1.3 all payments relating to construction of the Project payable to the Authority in accordance with the terms of the Concession Agreement, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- 4.1.4 O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;
  - (a) 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;
  - (b) Concession Fee due and payable to the Authority;
  - (c) monthly proportionate provision of Debt Service due in an Accounting Year;
  - (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement;
  - (e) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
  - (f) any reserve requirements set forth in the Financing Agreements; and
  - (g) balance, if any, in accordance with the instructions of the Concessionaire.
- 4.1.5 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative, if fresh information received during the course of the year makes such modification necessary.

#### **4.2 Withdrawals upon Termination**

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- (b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;
- (c) outstanding Concession Fee and other payments;
- (d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, and any claims in connection with or arising out of Termination;
- (e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 36 of the Concession Agreement;

- (f) outstanding Debt Service including the balance of Debt Due;
- (g) outstanding Subordinated Debt;
- (h) incurred or accrued O&M Expenses;
- (i) any other payments required to be made under the Concession Agreement; and
- (j) balance, if any, in accordance with the instructions of the Concessionaire.

#### **4.3 Application of insufficient funds**

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

#### **4.4 Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **4.5 Withdrawals during Suspension**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may exercise all or any of the rights of the Concessionaire during the period of Suspension under Article 35 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instruction were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

### **5. OBLIGATIONS OF THE ESCROW BANK**

#### **5.1 Segregation of funds**

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

#### **5.2 Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

#### **5.3 Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a

certificate signed by or on behalf of the Concessionaire;

- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders' Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative in connection herewith.

#### **5.4 No set off**

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

#### **5.5 Regulatory approvals**

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

### **6. ESCROW DEFAULT**

#### **6.1 Escrow Default**

6.1.1 Following events shall constitute an event of default by the Concessionaire (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders' Representative:

- (a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;
- (b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) business days; or
- (c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

### **7. TERMINATION OF ESCROW AGREEMENT**

#### **7.1 Duration of the Escrow Agreement**

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

## **7.2 Substitution of Escrow Bank**

The Concessionaire may, by not less than 45 (forty-five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and arrangements are made satisfactory to the Lenders' Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

## **7.3 Closure of Escrow Account**

The Escrow Bank shall, at the request of the Concessionaire and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

# **8. SUPPLEMENTARY ESCROW AGREEMENT**

## **8.1 Supplementary escrow agreement**

The Lenders' Representative and the Concessionaire shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

# **9 INDEMNITY**

## **9.1 General indemnity**

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all

proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

- 9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

## **9.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **10. DISPUTE RESOLUTION**

### **10.1 Dispute Resolution**

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to the Dispute Resolution Board as set forth in Clause 41.2. The matters which cannot be resolved through Dispute Resolution Board shall be decided finally by reference to arbitration as set forth in Clause 41.3.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The place of arbitration shall be Delhi and the language of arbitration shall be English.

## **11. MISCELLANEOUS PROVISIONS**

### **11.1 Governing law and jurisdiction**

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

### **11.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any

jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

### **11.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **11.4 Alteration of terms**

All additions, amendments, modifications, and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **11.5 Waiver**

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

### **11.6 No third-party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

### **11.7 Survival**

11.7.1 Termination of this Agreement:

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



of such termination or arising out of such termination.

- 11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

**11.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10 of this Agreement or otherwise.

**11.9 Successors and assigns**

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

**11.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**11.11 Language**

All notices, certificates, correspondence, and proceedings under or in connection with this Agreement shall be in English.

**11.12 Authorised representative**

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**11.13 Original Document**

This Agreement may be executed in 4 (four) counterparts, each of which when executed and delivered shall constitute an original of this Agreement.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

For and on behalf of **CONCESSIONAIRE** by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of **SENIOR LENDERS** by the Lenders' Representative

(Signature)

(Name)

(Designation)

(Address)

SIGNED, SEALED AND DELIVERED

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

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of

1. [•]

2. [•] Fax No.

SIGNED, SEALED AND DELIVERED

For and on behalf of [•] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

In the presence of

1. [•]

2. [•]

Draft Concession Agreement

## **SCHEDULE S - PANEL OF CHARTERED ACCOUNTANTS**

### **1. Panel of Chartered Accountants**

Pursuant to the provisions of Clause 30.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 10 (ten) reputable firms of Chartered Accountants having their registered offices in India (the “**Panel of Chartered Accountants**”). The criteria for preparing such Panel of Chartered Accountants and the procedure to be adopted in this behalf shall be as set forth in this **Schedule-S**.

### **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, 2013, 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 blacklisted by the Comptroller and Auditor General of India or the Authority; and
- (d) the firm should have an office in the State of ..... or in an adjacent State with at least 2 (two) practising Chartered Accountants on its rolls in such State.

Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practising Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

### **3. Evaluation and selection**

- 3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2 above. (For the avoidance of doubt, a firm which has conducted audit of the annual accounts of any such company for 5 (five) years shall be awarded 5 (five) points).
- 3.2 The Authority shall prepare a list of all the eligible firms along with the points scored by each such firm and 5 (five) firms scoring the highest points shall be identified and included in the draft Panel of Chartered Accountants.

### **4. Consultation with the Concessionaire**

The Authority shall convey the aforesaid panel of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the Authority to ascertain whether the selection of firms has been undertaken in accordance with the prescribed procedure and it shall send its comments, if any, to the Authority within 15 (fifteen)

days of receiving the aforesaid panel.

**5. Mutually agreed panel**

- 5.1 The Authority shall, after considering all relevant factors including the comments, if any, of the Concessionaire, finalise and constitute a panel of 10 (ten) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.
- 5.2 After completion of every 5 (five) years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this **Schedule-S**.

Draft Concession Agreement

## SCHEDULE T - VESTING CERTIFICATE

1. The [PM MITRA Park Uttar Pradesh Limited] (the “Authority”) refers to the Concession Agreement dated [●] (the “Agreement”) entered into between the Authority and [●] (the “Concessionaire”) for [Development, Operation and Maintenance of the PM MITRA Mega Textile and Apparel Park at Lucknow, Uttar Pradesh through Public Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer (DBFOT) basis.] (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 35.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the PM Mitra Lucknow Park shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this [●] day of [●], 20[●] at [●].

AGREED, ACCEPTED AND SIGNED

For and on behalf of **THE Authority** by: For and on behalf of **CONCESSIONAIRE** by

Signature

Name

Designation

Address

In the presence of: 1. [●] 2. [●]

## SCHEDULE U - SUBSTITUTION AGREEMENT

This SUBSTITUTION AGREEMENT is entered into on this the [●] day of [●] 20[●].

### AMONGST

1. **THE [●]**, 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 a PM-Mitra Park ..... at [Lucknow] in districts [Lucknow and Hardoi] in the State of [Uttar Pradesh] (“**Development, Operation and Maintenance of the PM MITRA Mega Textile and Apparel Park at Lucknow, Uttar Pradesh through Public Private Partnership (PPP)**”) on Design, Build, Finance, Operate and Transfer (DBFOT) basis.] (“**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, within the meaning of the Companies Act, 2013, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

**“Notice of Financial Default”** shall have the meaning ascribed thereto in Clause 3.2.1; and

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

## **1.2 Interpretation**

- 1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.
- 1.2.4 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, *mutatis mutandis*, to this Agreement.

## **2. ASSIGNMENT**

### **2.1 Assignment of rights and title**

The Concessionaire hereby assigns the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

## **3. SUBSTITUTION OF THE CONCESSIONAIRE**

### **3.1 Rights of substitution**

- 3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.
- 3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Project as Concessionaire either individually or collectively.

### **3.2 Substitution upon occurrence of Financial Default**

- 3.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the **“Notice of Financial Default”**) along with particulars thereof and send a copy to the Authority for its information and record. A Notice of Financial Default under this Article 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.
- 3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing



Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Project in accordance with the provisions of Article 35 of the Concession Agreement, and upon receipt of such notice, the Authority shall undertake Suspension under and in accordance with the provisions of the Concession Agreement. The aforesaid Suspension shall be revoked upon substitution of the Concessionaire by a Nominated Company, and in the event such substitution is not completed within 180 (one hundred and eighty) days from the date of such Suspension, the Authority may terminate the Concession Agreement forthwith by issuing a Termination Notice in accordance with the provisions of the Concession Agreement; provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority may extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days. For the avoidance of doubt, the Authority expressly agrees and undertakes to terminate the Concession Agreement forthwith, upon receipt of a written request from the Lenders' Representative at any time after 240 (two hundred and forty) days from the date of Suspension hereunder.

### **3.3 Substitution upon occurrence of Concessionaire Default**

- 3.3.1 Upon occurrence of a Concessionaire Default, the Authority shall by a notice inform the Lenders' Representative of its intention to issue a Termination Notice and grant 15 (fifteen) days' time to the Lenders' Representative to make a representation stating the intention to substitute the Concessionaire by a Nominated Company.
- 3.3.2 In the event that the Lenders' Representative makes a representation to the Authority within the period of 15 (fifteen) days specified in Clause 3.3.1, stating that it intends to substitute the Concessionaire by a Nominated Company, the Lenders' Representative shall be entitled to undertake and complete the substitution of the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement within a period of 180 (one hundred and eighty) days from the date of such representation, and the Authority shall either withhold Termination or undertake Suspension for the aforesaid period of 180 (one hundred and eighty) days, provided that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a period not exceeding 90 (ninety) days; provided further that the Lenders' Representative may at any time withdraw its representation hereunder and upon such withdrawal, the Authority may terminate this Agreement in accordance with the provisions hereof.

### **3.4 Procedure for substitution**

- 3.4.1 The Authority and the Concessionaire hereby agree that on or after the date of Notice of Financial Default or the date of representation to the Authority under Clause 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Senior Lenders, invite, negotiate and procure offers, either by private negotiations or public auction or tenders for the take over and Transfer of the Project including the Concession to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Concessionaire towards the Authority under the Concession Agreement and towards the Senior Lenders under the Financing Agreements.
- 3.4.2 To be eligible for substitution in place of the Concessionaire, the Nominated Company shall be required to fulfil the eligibility criteria that were laid down by the Authority for shortlisting the bidders for award of the Concession; provided that the Lenders'

Representative may represent to the Authority that all or any of such criteria may be waived in the interest of the Project, and if the Authority determines that such waiver shall not have any material adverse effect on the Project, it may waive all or any of such eligibility criteria.

- 3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request the Authority to:
- (a) accede to transfer to the Nominated Company the right to develop, operate and maintain the Project in accordance with the provisions of the Concession Agreement;
  - (b) endorse and transfer the Concession to the Nominated Company, on the same terms and conditions, for the residual Concession Period; and
  - (c) enter into a Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in this Agreement.
- 3.4.4 If the Authority has any objection to the transfer of Concession in favour of the Nominated Company in accordance with this Agreement, it shall within 15 (fifteen) days from the date of proposal made by the Lenders' Representative, give a reasoned order after hearing the Lenders' Representative. If no such objection is raised by the Authority, the Nominated Company shall be deemed to have been accepted. The Authority thereupon shall transfer and endorse the Concession within 15 (fifteen) days of its acceptance/deemed acceptance of the Nominated Company; provided that in the event of such objection by the Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Clause 3.4 shall be followed for substitution of such Nominated Company in place of the Concessionaire.
- 3.4.5 The transfer of Concession hereunder to a Nominated Company may, notwithstanding anything to the contrary in this Agreement and the Concession Agreement, be undertaken by transfer of no less than 75% (seventy five per cent) of the equity of the Concessionaire to the Nominated Company, and upon such transfer hereunder, the Concessionaire shall be deemed to be the Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

### **3.5 Selection to be binding**

The decision of the Lenders' Representative and the Authority in selection of the Nominated Company shall be final and binding on the Concessionaire. The Concessionaire irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Senior Lenders or the Authority taken pursuant to this Agreement including the transfer/assignment of the Concession in favour of the Nominated Company. The Concessionaire agrees and confirms that it shall not have any right to seek revaluation of assets of the Project or the Concessionaire's shares. It is hereby acknowledged by the Parties that the rights of the Lenders' Representative are irrevocable and shall not be contested in any proceedings before any court or Authority and the Concessionaire shall have no right or remedy to prevent, obstruct or restrain the Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Concession as requested by the Lenders' Representative.

## **4. PROJECT AGREEMENTS**

### **4.1 Substitution of Nominated Company in Project Agreements**

The Concessionaire shall ensure and procure that each Project Agreement contains provisions that entitle the Nominated Company to step into such Project Agreement, in its discretion, in place and substitution of the Concessionaire in the event of such Nominated Company's assumption of the liabilities and obligations of the Concessionaire under the

Concession Agreement.

## **5. TERMINATION OF CONCESSION AGREEMENT**

### **5.1 Termination upon occurrence of Financial Default**

At any time after issue of a Notice of Financial Default, the Lenders' Representative may by a notice in writing require the Authority to terminate the Concession Agreement forthwith, and upon receipt of such notice, the Authority shall undertake Termination under and in accordance with the provisions of Article 36 of the Concession Agreement.

### **5.2 Termination when no Nominated Company is selected**

In the event that no Nominated Company acceptable to the Authority is selected and recommended by the Lenders' Representative within the period of 180 (one hundred and eighty) days or any extension thereof as set forth in Clause 3.3.2, the Authority may terminate the Concession Agreement forthwith in accordance with the provisions thereof.

### **5.3 Realisation of Debt Due**

The Authority and the Concessionaire hereby acknowledge and agree that, without prejudice to their any other right or remedy, the Lenders' Representative is entitled to receive from the Concessionaire, without any further reference to or consent of the Concessionaire, the Debt Due upon Termination of the Concession Agreement. For realisation of the Debt Due, the Lenders' Representative shall be entitled to make its claim from the Escrow Account in accordance with the provisions of the Concession Agreement and the Escrow Agreement.

## **6. DURATION OF THE AGREEMENT**

### **6.1 Duration of the Agreement**

This Agreement shall come into force from the date hereof and shall expire at the earliest to occur of the following events:

- (a) Termination of the Concession Agreement; or
- (b) no sum remains to be advanced, or is outstanding to the Senior Lenders, under the Financing Agreements.

## **7. INDEMNITY**

### **7.1 General indemnity**

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders' Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the

Concessionaire's obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders' Representative, its officers, servants and agents.

## **7.2 Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the "**Indemnified Party**"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

## **8. DISPUTE RESOLUTION**

### **8.1 Dispute Resolution**

- 8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be referred to the Dispute Resolution Board as set forth in Clause 41.2. The matters which cannot be resolved through Dispute Resolution board shall be decided finally by reference to arbitration as set forth in Clause 41.3.
- 8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1 Governing law and jurisdiction**

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

### **9.2 Waiver of sovereign immunity**

The Authority unconditionally and irrevocably:

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

### **9.3 Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

### **9.4 Alteration of terms**

All additions, amendments, modifications, and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

### **9.5 Waiver**

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

### **9.6 No third-party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

### **9.7 Survival**

9.7.1 Termination of this Agreement:

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

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

### **9.8 Severability**

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 8 of this Agreement or otherwise.

**9.9 Successors and assigns**

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

**9.10 Notices**

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

**9.11 Language**

All notices, certificates, correspondence, and proceedings under or in connection with this Agreement shall be in English.

**9.12 Authorised representatives**

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

**9.13 Original Document**

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

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of THE Authority by:

**CONCESSIONAIRE** by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

(Fax No.)

(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. [•]

Draft Concession Agreement

## **SCHEDULE V - USER CHARTER**

### **1. Service with safety**

It is our aim to provide safety and quality in the PM Mitra Park Lucknow through state-of-the-art infrastructure for total customer satisfaction. This Charter explains our commitments to the users of our PM Mitra Lucknow Park and what they can expect from us.

### **2. Contents**

- i. Introduction
- ii. Our standards for User service
- iii. Availability of information
- iv. Lost property
- v. Listening to your views
- vi. Our promised response time

#### **2.1. Introduction**

Users' satisfaction is our motto! It is the intention of the PM Mitra Park Lucknow management to provide quality service to the users of this PM Mitra Park Lucknow through its trained manpower and contractors. We aim to provide:

- a. Safety and security for the Users of PM Mitra Park Lucknow with clean and hygienic environment
- b. Reliable and easy to understand information
- c. Polite, customer friendly and helpful staff
- d. Availability of essential facilities

#### **2.2. Our standards for User Service**

We will continue to toil hard at improving our performance to provide you with a reliable and comfortable service at our PM Mitra Park Lucknow.

##### **2.2.1 Approach to the PM Mitra Park Lucknow**

We will make all out efforts to make approach within the PM Mitra Park Lucknow smooth and comfortable. Our traffic plans will be so oriented as to enable easy entry into and exit from the PM Mitra Park Lucknow. To make your approach comfortable we will tow away the vehicles parked in an unauthorised manner on the approach roads within the PM Mitra Park Lucknow. Entry into the PM Mitra Park Lucknow will be non-discriminatory basis.

#### **2.3. Availability of information**

We will provide clear and easy to understand universally accepted signages inside the PM Mitra Park Lucknow so that you can avail all the facilities without asking for anybody's help. However, if you need any help, our trained staff will be there to lend you a helping hand.

#### **2.4. Lost Property**

Lost something at the PM Mitra Park Lucknow? You may get it back from the lost property office at the PM Mitra Park Lucknow. All the lost and found items will be sent to the lost property officer in-charge.

#### **2.5. Listening to your views**

Customer is always right. Customer satisfaction is our motto. Continuous improvement is our aim. To record your suggestions/ complaints, suggestion books have been made available at various locations. You can also contact us through correspondence or our phone lines or through our website.

#### **2.6. Our promised response times**



When you write to us, you should hear from us within 7 (seven) working days.

- a. In case it needs a longer time to provide a full reply, we will send you an acknowledgement within 7 (seven) working days and reply within 25 (twenty five) working days.
- b. If a full reply cannot be made within 25 (twenty five) working days, we will contact and update you.
- c. There are several agencies involved in providing the various services at the PM Mitra Park Lucknow. Some of the services we have promised above may involve interaction and coordination with these agencies who are primarily responsible for the provision of the service. In this case, we shall make best efforts to address your concerns.

If you are unhappy with our reply, we will make all our efforts to make you satisfied with our response. Kindly let us know. This will help us identify weak spots and continually improve our performance.

Draft Concession Agreement

## **SCHEDULE W - DISPUTE RESOLUTION BOARD**

### **Procedure for Dispute Resolution Board**

The parties to the Concession Agreement mutually agree as follows:

- (1) The Board shall comprise of 03 (three) members having experience in the field of construction or have been involved in the works related to construction and with the interpretation of contractual documents. 01 (one) member shall be selected by each of the Authority and the Concessionaire from the list maintained by National Highways Authority of India hosted on its website [[www.nhai.gov.in](http://www.nhai.gov.in)].

In the event the Parties fail to select the member within 28 (twenty eight) days of the date of the signing of the Concession Agreement, in that eventuality, upon the request of either or both Parties such member shall be selected by SAROD within 14 (fourteen) days. The third member shall be selected by the other two members from the same list. If the two members selected by or on behalf of the Parties fail to select the third member within 14 (fourteen) days after the later of their selections, then upon the request of either or both parties such third member shall be selected by SAROD within 14 (fourteen) days. The third member shall serve as chairman of the board.

- (2) The board shall be constituted when each of the three board members has signed a board member's declaration of acceptance as required by the DRB's rules and procedures (which, along with the declaration of acceptance form, are attached as Annexure herewith).
- (3) In the event of death, disability, or resignation of any member, such member shall be replaced in the same manner as the member being replaced was selected. If for any other reason, a member fails or is unable to serve, the chairman (or failing the action of the chairman then either of the other members) shall inform the Parties and such non-serving member shall be replaced in the same manner as the member being replaced was selected. Any replacement made by the parties shall be completed within 28 (twenty eight) days after the event giving rise to the vacancy on the board, failing which the replacement shall be made by SAROD in same manner as described above. Replacement shall be considered complete when the new member signs the board member's declaration of acceptance. Throughout any replacement process, the members not being replaced shall continue to serve and the board shall continue to function and its activities shall have the same force and effect as if the vacancy had not occurred, provided, however, that the board shall not conduct a hearing nor issue a decision until the replacement is completed.
- (4) If either the Authority or the Concessionaire is dissatisfied with any decision of the board, and/or if the board fails to issue its decision within 56 (fifty six) days after receipt of all the pleadings (along with the supporting documents) of the parties by the chairman of the board or any extension mutually agreed upon by the Authority and the Concessionaire, in such a case, either the Authority or the Concessionaire may, within 28 (twenty eight) days after his receipt of the decision, or within 28 (twenty eight) days after the expiry of the said period, as the case may be, give notice to the other party, with a copy for information to the Independent Expert, of his intention to refer the matter to the Conciliation Committee of Independent Experts (CCIE) of the Authority for conciliation/amicable settlement.
- (5) It is mandatory to refer all the Disputes to DRB before issuance of completion certificate and satisfactory completion of punch list items. No Dispute shall be entertained after completion of aforementioned date.

- (6) If the board has issued a decision to the Authority and the Concessionaire within the said 56 (fifty six) days or any extension mutually agreed upon by the Authority and the Concessionaire and no notice of intention to commence Conciliation by the Conciliation Committee of Independent Experts (CCIE) of the Authority for conciliation/ amicable settlement as to such dispute has been given by either the Authority or the Concessionaire within 28 (twenty eight) days after the Parties received such decision from the board, the decision shall become final and binding upon the Authority and Concessionaire.
- (7) Whether or not it has become final and binding upon the Authority and the Concessionaire, a decision shall be admissible as evidence in any subsequent dispute resolution procedure, including any arbitration or litigation having any relation to the Dispute to which the decision relates.
- (8) All decision of DRB which have become final and binding or till they have been reversed in subsequent conciliation/arbitration process shall be implemented by the Parties forthwith. Such implementation shall also include any relevant action of the Independent Expert.
- (9) If during the Concession Period, the Authority and the Concessionaire are of the opinion that the Disputes Resolution Board is not performing its functions properly, the Authority and the Concessionaire may together disband the Disputes Resolution Board and reconstitute it. In that case, a new board shall be selected in accordance with the provisions applying to the selection of the original board as specified above, except that words "within 28 (twenty eight) days after the signing of this Concession Agreement" shall be replaced by the words "within 28 (twenty eight) days after the date on which the notice disbanding the original board became effective".
- (10) The Authority and the Concessionaire shall jointly sign a notice specifying that the board shall stand disbanded with effect from the date specified in the notice. The notice shall be posted by email to each member of the board. A member shall be deemed to have received the email even he refuses to have received the same.
- (11) All other terms and conditions of the original Concession Agreement shall remain unaltered/unaffected and the parties shall remain bound by terms and conditions as contained therein.

**Annexure to Schedule [W]  
Disputes Resolution Board's Rules and Procedures**

1. Except for providing the services required hereunder, the board members shall not give any advice to either Party or to the Independent Expert concerning conduct of the works. The board members:
  - a) Shall have no financial interest in any Party to the Concession Agreement, or the Independent Expert, or a financial interest in the contract, except for payment for services on the Board.
  - b) Shall have had no previous employment by, or financial ties to, any party to the Concession Agreement, or the Independent Expert, except for fee based consulting services/advisers on other projects, and/or be retired Government officers (not connected in whole or part with the Project), all of which must be disclosed in writing to both Parties prior to appointment to the board.
  - c) Shall have disclosed in writing to both Parties prior to appointment to the board any and all recent or close professional or personal relationships with any director, officer, or employee of Party to the Concession Agreement, or the Independent Expert, and any and all prior involvement in the Project to which the Concession Agreement relates;
  - d) Shall not, while board member, be employed whether as a consultant or adviser or otherwise by either Party to the Concession Agreement, or the Independent Expert, except as a board member, without the prior consent of the Parties and the other board members;
  - e) Shall not, while a board member, engage in discussion or make any agreement with any Party to the Concession Agreement, or with the Independent Expert, regarding employment whether as a consultant or otherwise whether after the Concession Agreement is completed or after service as a board member is completed.
  - f) Shall remain and be impartial and independent of the Parties and shall disclose in writing to the Authority, the Concessionaire and one another any fact or circumstance which might be such as cause to either the Authority or the Concessionaire to question the continued existence of the impartiality and independence required of board members; and
  - g) Shall be fluent in the language of the Concession Agreement.
2. Except for its participation in the board's activities as provided in the Concession Agreement and in this Agreement none of the Authority, the Concessionaire, and or the Independent Expert shall solicit advice or consultation from the board or the board members on matters dealing with the conduct of the works.
3. The Concessionaire shall:
  - (a) Furnish to each Board member one copy of all documents which the board may request including Concession Agreement, progress reports and other documents pertinent to the performance of the Concession Agreement.
  - (b) In cooperation with the Authority, coordinate the site visits of the board, including conference facilities, and secretarial and copying service.
4. The board shall begin its activities following the signing of a board member's declaration of acceptance by all three board members, and it shall terminate these activities as set forth below:

- (a) The board shall terminate its regular activities when either (i) issuance of completion certificate and completion of punch list items or (ii) the Parties have terminated the Concession Agreement and when, in either case, the board has communicated to the Parties and the Independent Expert its decision on all Disputes previously referred to it.
- (b) Once the board has terminated its regular activities as provided by the previous paragraph, the board shall remain available to process any dispute referred to it by either Party. In case of such a referral, board members shall receive payments as provided in paragraphs 7(a) (ii), (iii) and (iv).
5. Board members shall not assign or subcontract any of their work under these rules and procedures.
6. The board members are independent and not employees or agents of either the Authority or the Concessionaire.
7. Payments to the board members for their services shall be governed by the following provisions:
- (a) Each board member will receive payments as follows:
- i. A retainer fee per calendar month as specified in the schedule of fee made part of this Schedule and its revision from time to time. This retainer fee shall be considered as payment in full for:
- (A) Being available, on 7 (seven) days' notice, for all hearings, Site visits, and other meetings of the board.
- (B) Being conversant with all project developments and maintaining relevant files.
- (C) All offices and overhead expenses such as secretarial services, photocopying and office supplies (but not include telephone calls, faxes and telexes) incurred in connection with the duties as a board member.
- ii. A daily fee as specified in the schedule of fee in respect of fee for site visit & meeting, fee for meeting/ hearing not at site and extra charges for days (maximum. of 2 (two) days for travel on each occasion) other than hearing / meeting days.
- iii. Expenses, in addition to the above, all reasonable and necessary travel expenses (including economy class air fare, subsistence, and other direct travel expenses). Receipts for all expenses in excess of [Rs. 2000/- (Rupees two thousand only)] shall be provided.
- iv. Reimbursement of any taxes that may be levied on payments made to the board member pursuant to this paragraph 7.
- (a) The retainer fee and other fees shall remain fixed for the period of each board member's term until revised by Authority.
- (b) Phasing out of monthly retainer fee, beginning with the next month after the completion certificate (or, if there are more than one, the one issued last) has been issued, the board members shall receive only one-third of the monthly retainer fee till next one year. Beginning with the next month after the board has terminated its regular activities pursuant to paragraph 4(a) above, the board members shall no longer receive any monthly retainer fee.
- (c) Payments to the board members shall be shared equally by the Authority and the Concessionaire. The concerned Project Implementation Unit (PIU) of Authority shall pay members' invoices within 30

(thirty) calendar days after receipt of such invoices and shall invoice the Concessionaire for one-half of the amounts of such invoices. The Concessionaire shall pay such invoices within 30 (thirty) days' time period after receipt of such invoices.

8. Board Site visits:

- (a) The board shall visit the Site and meet the representatives of the Authority, the Concessionaire and the Independent Expert at regular intervals, at times of critical construction events, at the written request of either Party, and in any case not less than 6 (six) times in any period of 12 (twelve) months. The timing of Site visits shall be as agreed among the Authority, the Concessionaire and the board, but failing agreement shall be fixed by the board.
- (b) Site visits shall include an informal discussion of the status of the construction of the works. Site visits shall be attended by personnel from the Authority, the Concessionaire and the Independent Expert.
- (c) At the conclusion of each Site visit, the board shall prepare a report covering its activities during the visit and shall send copies to the Parties and to the Independent Expert.

9. Procedure for Dispute Referral to the Board:

- (a) If either Party objects to any action or inaction of the other Party or the Independent Expert, the objecting Party may file a written notice of Dispute to the other Party with a copy to the Independent Expert stating that it is given pursuant to the Agreement and state clearly and in details the basis of the Dispute.
- (b) The Party receiving the notice of Dispute will consider it and respond to it in writing within 14 (fourteen) days after receipt.
- (c) This response shall be final and conclusive on the subject, unless a written appeal to the response is filed with the responding party within 10 (ten) days after receiving the response and call upon Independent Expert to mediate and assist the Parties in arriving an amicable settlement thereof. Both Parties are encouraged to pursue the matter further to attempt to settle the Dispute.
- (d) If the Independent Expert receiving the notice of Dispute fails to provide a written response within 14 (fourteen) days after receipt of such notice or failing mediation by Independent Expert, either Party may require such Dispute to be referred to the board, either Party may refer the Dispute to the board by written request to the board. The request for decision shall state clearly and in full detail the specific issues of the Dispute (s) to be considered by board and shall be addressed to the chairman of the board, with copies to the other board members, the other Party and the Independent Expert, and it shall state that it is made pursuant to this Agreement.
- (e) When a Dispute is referred to the board, and the board is satisfied that the Dispute requires the board's assistance, the board decide when to conduct a hearing on the Dispute. The board may request that written documentation and arguments from both Parties be submitted to each board member before the hearing begins. The Parties shall submit insofar as possible agreed statements of the relevant facts.
- (f) During the hearing, the Concessionaire, the Authority, and the Independent Expert shall each have ample opportunity to be heard and to offer evidence. The board's decision for resolution of the Dispute will be given in writing to the Authority, the Concessionaire and the Independent Expert as soon as possible, and in any event not more than 56 (fifty six) days or any mutually extended period

between the Authority and the Concessionaire. The time period of 56 (fifty six) days of issuance of DRB decision will reckon/start from the day of first hearing that begins after submission of complete pleadings (including supporting documents, if any) by the parties.

10. Conduct of Hearings:

- (a) Normally hearings will be conducted at the Site, but any location that would be more convenient and still provide all required facilities and access to necessary documentation may be utilized by the board. Private session of the board may be held at any cost-effective location convenient to the board. Video recordings of all hearings shall invariably be made.
  - (b) The Authority, the Independent Expert and the Concessionaire shall be given opportunity to have representatives at all hearings. Parties should restrain to bring any Advocate/Law Firm during DRB hearings.
  - (c) During the hearings, no board member shall express any opinion concerning the merit of the respective arguments of the parties.
  - (d) After the hearings are concluded, the board shall meet privately to formulate its decision. The private meeting (s) of the board shall not exceed 3 (three) sittings. All board deliberations shall be conducted in private, with all members' individual views kept strictly confidential. The board's decisions, together with an explanation of its reasoning shall be submitted in writing to both Parties and to the Independent Expert. The decision shall be based on the pertinent contract provisions, applicable laws and regulations and the facts and circumstances involved in the dispute.
  - (e) The Board shall make every effort to reach a unanimous decision. If this proves impossible the majority shall decide and the dissenting member may prepare a written minority report together with an explanation of its reasoning for submission to both Parties and to the Independent Expert.
11. In all procedural matters, including the furnishing of written documents and arguments relating to Disputes, Site visits and conduct of hearings, the board shall have full and the final authority. If a unanimous decision on any such matter proves impossible, the majority shall prevail.
12. After having been selected and where necessary approved each board member shall sign two copies of the following declaration and make one copy available each to the Authority and to the Concessionaire.

**"BOARD MEMBER'S DECLARATION OF ACCEPTANCE"**

WHEREAS

- (a) A Concession Agreement (the Concession) for the Development, Operation and Maintenance of the PM MITRA Mega Textile and Apparel Park at Lucknow, Uttar Pradesh through Public Private Partnership (PPP) on Design, Build, Finance, Operate and Transfer (DBFOT) basis. [fill in the name of Project] has been signed on \_\_\_\_\_ [fill in date) between PM MITRA Park Uttar Pradesh Limited [name of Authority) and \_\_\_\_\_ [name of Concessionaire] (the Concessionaire).;
- (b) The provisions of Agreement and Dispute Resolution Board's rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- (c) The undersigned has been selected to serve as a board member on said board;

NOW THEREFORE, the undersigned board member hereby declares as follows:

- 1. I accept the selection as a board member and agree to serve on the board and to be bound by the provisions of Concession Agreement and rules and procedure provided for establishment and operation of Dispute Resolution Board (DRB).
- 2. With respect to paragraph 1 of Dispute Resolution Board's rules and procedure. said Annex A, I declare:
  - (a) that I have no financial interest of the kind referred to in subparagraph (a):
  - (b) that I have had no previous employment nor financial ties of the kind referred to in subparagraph (b); and
  - (c) that I have made to both Parties any disclosures that may be required by sub- paragraphs (b) and (c).
- 3. I declare that I have \_\_\_\_ no. of Arbitrations (list enclosed) and \_\_\_\_ no of DRBs (list enclosed) in progress and that I will give sufficient time for the current assignment.

BOARD MEMBER

\_\_\_\_\_ (insert name of board member)  
Date: \_\_\_\_\_



**Schedule of expenses and fees payable to the member (s) of Dispute Resolution Board**

The fee and other expenses payable to the members of DRB shall be as under: -

<b>S. No.</b>	<b>PARTICULAR</b>	<b>AMOUNT PAYABLE</b>
1	Retainer-ship fee, secretarial assistance and incidental charges (telephone, fax, postage etc.)	[Rs. 50, 000/- per month]
2 (i)	Fee for site visit or meetings at site	[Rs. 25, 000/- per day]
(ii)	Fee for meetings/hearings not at site	[Rs. 10,000 /- per day]
3	Traveling expenses	Economy class by air, AC first class by train and AC taxi by road
4	Lodging & Boarding	[Rs 15,000/- per day (Metro Cities); or Rs. 10,000 /- per day (in other cities); or Rs. 5,000/- per day (own arrangement)]
5	Extra charges for days other than hearing/meeting days (travel days maximum of 2 (two) days on each occasion)	[Rs.5,000/-]
6	Local conveyance	[Rs.2,000/-]

Notes:

- i. Lodging, boarding and travelling expenses will be allowed only for those members who are residing 100 (one hundred) kms away from the place of meeting.
- ii. Delhi, Mumbai, Chennai, Kolkata, Bangalore, and Hyderabad shall be considered as metro cities.
- iii. The above schedule of fee and expenses shall be applicable on or after the date of issue of this circular.
- iv. The expenses are to be shared equally by the parties i.e. Authority and Concessionaire.

**Appendix-I: Arbitration Rules of the Society for Affordable Redressal of Disputes  
(SAROD) (SAROD' ARBITRATION RULES) Under Clause 43.3.1**

**ARBITRATION RULES OF SAROD**

**INDEX**

**Rule**

1. Scope of Application
2. Definitions
3. Notice, Calculation of Periods of Time
4. Commencement of Arbitration
5. Response by Respondent
6. Filing of Case Statements
7. Contents of Case Statements
8. Default in Filing and Serving Case Statements
9. Further Written Statements
10. SAROD to Provide Assistance
11. Appointment of Tribunal
12. Multi-party Appointment of the Tribunal
13. Appointment of Substitute Arbitrator
14. Independence and Impartiality of the Tribunal
15. Code of Ethics for Arbitrators
16. Challenge of Arbitrators
17. Decision on Challenge
18. Removal of the Tribunal
19. Re-hearing in the Event of Replacement of the Tribunal
20. Jurisdiction of the Tribunal
21. Fees of SAROD and Arbitral Tribunal

22. Transmission of File of the Tribunal
23. Juridical Seat of Arbitration
24. Language of Arbitration
25. Conduct of the Proceeding
26. Communications between Parties and the Tribunal
27. Party Representatives
28. Hearings
29. Documents - only Arbitration
30. Witnesses
31. Experts Appointed by the Tribunal
32. Rules applicable to substance of Dispute
33. Closure of Hearings
34. Additional Powers of the Tribunal
35. Deposits to Costs and Expenses
36. Decision Making by the Tribunal
37. The Award
38. Additional Award
39. Correction of Awards
40. Settlement
41. Interest
42. Costs
43. Waiver
44. Exclusion of Liability

45. General Provisions

46. Amendment to Rules

Draft Concession Agreement

## **SCHEDULE X - MAINTENACE STANDARDS OF ACCESS ROAD**

### **1. Maintenance Requirements**

The Authority shall, at all times maintain the Access Road, provided by the Authority in terms of Article 6 of this Agreement, in accordance with the provisions of this Agreement, this Schedule-Y, Applicable Laws and Applicable Permits.

### **2. Repair/rectification of Defects and deficiencies**

The obligations of the Authority in respect of Maintenance Requirements shall include repair and rectification of the Defects and deficiencies.

Draft Concession Agreement

**Appendix-II:**  
**List of Standards for reference**

**EXCAVATION**

**EARTHWORK, EXCAVATION AND SUB BASE**

Applicable Codes

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

- a) IS: 783 - Code of practice for laying of concrete pipes.
- b) IS: 3764 - Excavation work - Code of Safety .
- c) IS: 2720 - Methods of test for soils:
  - (Part-1) - Preparation of dry soil samples for various tests.
  - (Part-2) - Determination of Water Content.
  - (Part-4) - Grain size analysis.
  - (Part-5) - Determination of liquid and plastic limit.
  - (Part-7) - Determination of water content - dry density relation using light compaction.
  - (Part-8) - Determination of water content - dry density relation using heavy compaction.
  - (Part-9) - Determination of dry density – moisture content by constant weight of soil method.
  - (Part-14) - Determination of density index (relative density) of cohesionless soils.
  - (Part-22) - Determination of organic matter.
  - (Part-26) - Determination of pH Value.
  - (Part-27) - Determination of total soluble sulphates.
  - (Part-28) - Determination of dry density of soils in place, by the sand replacement method.
  - (Part-33) - Determination of the density in place by the ring and water replacement method.
  - (Part-34) - Determination of density of soil in place by rubber balloon method.
  - (Part-38) - Compaction control tests (Hilf Method).
- d) IS: 1498 - Classification and identification of soils for general engineering purposes)
- IS: 4081 - Safety code for blasting and related drilling operation.

(b) **Masonry**

<b>IS. No.</b>	<b>Title</b>
IS 269	Specification for Ordinary Portland cement (33 Grade)

Draft Concession Agreement

IS 383	Specification for coarse and fine aggregate
IS 456	Plain and reinforced concrete - Code of practice
IS 712	Specification for building limes.
IS 1077	Common burnt clay building bricks.
IS 1200 (Part 3)	Method of measurements of brick works
IS 2212	Code of practice for brick work. (1st Revision)
IS 2222	Specification for burnt clay perforated building bricks.
IS 2645	Specification for integral water proofing compounds for cement mortar and concrete
IS 2849	Specification for non-load bearing gypsum partition blocks, (Solid and hollow types)
IS 3346:1980	Method of the determination of thermal conductivity of thermal insulation materials
IS 3495	Method of test for burnt clay building bricks.
IS 3812	Specification for fly ash for use as pozzolana and admixture.
IS 4082:1977	Stacking & storage of construction materials and components at site – Recommendations
IS 4139	Specification of calcium silicate bricks
IS 4885	Specification for sewer brick
IS 5454	Methods of sampling of clay building bricks.
IS 6441 (Part-1): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of unit weight or bulk density and moisture Content
IS 6441 (Part-2): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of dry shrinkage
IS 6441 (Part-5): 1972	Methods for test for Autoclaved Cellular concrete Products: Determination of compressive strength
IS 9103	Specification for concrete admixtures
IS 12894	Pulverized fuel ash lime bricks specification,
IS 13757	Specification of burnt clay fly ash bricks.

### Mortar

I.S. No.	Title
IS 269	Specification for 33 grade ordinary Portland cement
IS 383	Specification for coarse and fine aggregate from natural source for concrete.
IS 455	Specification for Portland slag cement.
IS 460 (Part I)	Specification for test sieves: wire cloth test sieves.
IS 650	Specification for standard sand for testing of cement
IS 1269	Specification for 53 grade ordinary Portland cement
IS 1344	Specification for calcined clay Pozzolana.
IS 1489	Specification for Portland pozzolana cement
IS 1542	Specification for sand for plaster
IS 1727	Methods of Test for Pozzolanic materials



IS 2116	Specification for sand for masonry mortar.
---------	--

IS 2250	Code of practice for preparation and use of masonry Mortar.
IS 2386 (Pt-I)	Method of test for aggregate for concrete (Particle size and shape)
IS 2386 (Pt-II)	-Do- Estimation of deleterious materials and organic impurities.
IS 2386 (Pt-III)	-Do- Specific gravity, density, voids, absorption and bulking.
IS 3025	Method of sampling and test for water
IS 3406	Specification for masonry cement.
IS 3812 (Part I)	Specification for fly ash for use as pozzolana in cement mortar and concrete
IS 3812 (Part II)	Specification for fly ash for use as admixture in cement mortar and concrete
IS 4031 (Part I) to (Part XIII)	Method of Physical test for hydraulic cement
IS 4032	Method of chemical analysis of Hydraulic cement.
IS 8041	Rapid hardening Portland cement.
IS 8042	Specification for white cement
IS 8043	Hydrophobic Portland cement
IS 8112	Specification for 43 grade ordinary Portland cement
IS 11652	Woven HDPE sacks for packing cement
IS 11653	Woven polypropylene sacks for packing cement
IS 12174	Jute synthetic union bags for packing cement

## **PLAIN & REINFORCED CONCRETE**

### Applicable Codes

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

### Materials

- 1) IS.269 Specification for 33 grade ordinary Portland cement.
- 2) IS.455 Specification for Portland slag cement.
- 3) IS.1489 Specification for Portland-pozzolana cement (Part 1 & 2).
- 4) IS: 8112 Specification for 43 grade ordinary Portland cement.
- 5) IS: 12330 Specification for sulphate resisting Portland cement.
- 6) IS: 383 Specification for coarse and fine aggregates from natural sources for concrete.
- 7) IS: 432 Specification for mild steel and medium (tensile steel bars and hard-drawn steel) wires for concrete reinforcement. (Part 1 & 2)
- 8) IS: 786 Specification for high strength deformed steel bars and wires for concrete reinforcement.
- 9) IS: 1566 Specification for hard-drawn steel wire fabric for concrete reinforcement.
- 10) IS: 9103 Specification for admixtures for concrete.
- 11) IS: 2645 Specification for integral cement water- proofing compounds.
- 12) IS: 4990 Specification for plywood for concrete shuttering work.
- 13) IS: 1786 2008 High strength deformed steel bars and wires for concrete reinforcement

### Material Testing

- 1) IS.4031 Methods of physical tests for hydraulic cement (Parts 1 to 15)
- 2) IS: 4032 Method for chemical analysis of hydraulic cement.
- 3) IS: 650 Specification for standard sand for testing of cement.
- 4) IS: 2430 Methods for sampling of aggregates for concrete.
- 5) IS.2386 Methods of test for aggregates for concrete (Parts 1 to 8)
- 6) IS: 3025 Methods of sampling and test (physical and chemical) for water used in industry.
- 7) IS: 6925 Methods of test for determination of water soluble chlorides in concrete admixtures.

### Material Storage

- 1) IS: 4082 Recommendations on stacking and storing of construction materials at site.

### Concrete Mix Design

- 1) IS: 10262 Recommended guidelines for concrete mix design.
- 2) SP: 23 (S&T) Handbook on Concrete Mixes

### Concrete Testing

- 1) IS.1199 Method of sampling and analysis of concrete.
- 2) IS: 516 Method of test for strength of concrete.
- 3) IS: 9013 Method of making, curing and determining compressive strength of accelerated cured concrete test specimens.
- 4) IS: 8142 Method of test for determining setting time of concrete by penetration resistance.
- 5) IS: 9284 Method of test for abrasion resistance of concrete.

- 6) IS: 2770 Methods of testing bond in reinforced concrete.Equipments
- 1) IS: 1791 Specification for batch type concrete mixers.
- 2) IS: 2438 Specification for roller pan mixer.
- 3) IS: 4925 Specification for concrete batching and mixing plant.
- 4) IS: 5892 Specification for concrete transit mixer and agitator.
- 5) IS: 7242 Specification for concrete spreaders.
- 6) IS: 2505 General Requirements for concrete vibrators: Immersion type.
- 7) IS: 2506 General Requirements for screed board concrete vibrators.
- 8) IS: 2514 Specification for concrete vibrating tables.
- 9) IS: 3366 Specification for pan vibrators.
- 10) IS: 4656 Specification for form vibrators for concrete.
- 11) IS: 11993 Code of practice for use of screed board concrete vibrators.
- 12) IS: 7251 Specification for concrete finishers.
- 13) IS: 2722 Specification for portable swing weigh batchers for concrete (single and double bucket type).
- 14) IS: 2750 Specification for steel scaffoldings.

#### Codes of Practice

- 1) IS: 456 Code of practice for plain and reinforced concrete.
  - 2) IS: 457 Code of practice for general construction of plain and reinforced concrete for dams and otherMassive structures.
  - 3) IS: 3370 Code of practice for concrete structures for storage of liquids (Parts 1 to 4)
  - 4) IS: 3935 Code of practice for composite construction.
  - 5) IS: 2204 Code of practice for construction of reinforced concrete shell roof.
  - 6) IS: 2210 Criteria for the design of reinforced concrete shell structures and folded plates.
  - 7) IS: 2502 Code of practice for bending and fixing of bars for concrete reinforcement.
  - 8) IS: 5525 Recommendation for detailing of reinforcement in reinforced concrete works.
  - 9) IS: 2751 Code of practice for welding of mild steel plain and deformed bars used for Reinforced concrete construction.
  - 10) IS: 9417 Specification for welding cold worked bars for reinforced concrete construction.
  - 11) IS: 3558 Code of practice for use of immersion vibrators for consolidating concrete.
  - 12) IS: 3414 Code of practice for design and installation of joints in buildings.
  - 13) IS: 4326 Code of practice for earthquake resistant design and construction of building.
  - 14) IS: 4014 Code of practice for steel tubular scaffolding (Parts 1 & 2)
  - 15) IS: 2571 Code of practice for laying in situ cement concrete flooring.
  - 16) IS: 7861 Code of practice for extreme weather concreting: Part 1 Recommended practice for hot weather concreting.
  
  - 17) IS: 1893 Criteria for earthquake resistant structures subjected to seismic forces.
  - 18) IS: 13920 Code of Practice for Ductile Detailing of Reinforced Concrete Structures subjected toSeismic forces.
  - 19) IS: 13827 Improving Earthquake Resistance of Earthen Buildings-Guidelines.
  - 20) IS: 13828 Improving Earthquake Resistance of Low Strength Masonry Buildings-Guidelines
- Construction Safety

- 1) IS.3696 Safety code for scaffolds and ladders. (Parts 1 & 2)
- 2) IS: 7969 Safety code for handling and storage of building materials.
- 3) IS: 8989 Safety code for erection of concrete framed structures.Measurement
- 1) IS 1200 Method of measurement of building and Engineer-in-charge Works
- 2) IS 3385 Code of practice for measurement of Civil Engineer-in-charge Works

(c)

**(d) MASONRY, PLASTERING AND PAINTING**

Applicable Codes and Specifications

The following Indian Standard Codes, unless otherwise specified herein, shall be applicable. In all cases, the latest editions including all applicable official amendments and revisions shall be referred to.

- IS: 110 - Ready mixed paint, brushing, grey filler, for enamels for use over primers IS: 269 - Specification for 33 grade ordinary Portland cement
- IS: 280 - Specification for mild steel wire for general Engineering purposes
- IS: 287 - Recommendations for maximum permissible moisture content of timber used for different purposes
- IS: 304 - High Tensile Brass Ingots and Castings. IS: 337 - Varnish, finishing interior
- IS: 348 - French polish
- IS: 383 - Specification for coarse and fine aggregates from natural sources for concrete IS: 412 - Expanded metal steel sheets for general purposes
- IS: 419 - Specification for putty for use on window frames IS: 428 - Distemper, oil emulsion, colour as required
- IS: 459 - Specification for unreinforced corrugated and semi-corrugated asbestos cement sheets IS: 702 - Specification for industrial bitumen
- IS: 710 - Specification for marine plywood IS: 712 - Specification for building limes
- IS: 730 - Specification for hook bolts for corrugated sheet roofing
- IS: 733 - Wrought aluminium and aluminium alloys, bars, rods and sections for general Engineering purposes
- IS: 777 - Specification for glazed earthenware tiles
- IS: 1003 - Specification for timber panelled and glazed shutters (Parts 1 & 2) IS: 1038 - Specification for steel doors, windows and ventilators
- IS: 1077 - Specification for common burnt clay building bricks
- IS: 1081 - Code of practice for fixing and glazing of metal (steel & aluminium) doors, windows and ventilators
- IS: 1124 - Method of test for determination of water absorption, apparent specific gravity and porosity of natural building stones
- IS: 1237 - Specification for cement concrete flooring tiles
- IS: 1322 - Bitumen felts for water proofing and damp proofing
- IS: 1346 - Code of practice for water proofing of roofs with bitumen felts IS: 1361 - Specification for steel windows for industrial buildings
- IS: 1397 - Specification for kraft paper
- IS: 1443 - Code of practice for laying and finishing of cement concrete flooring tiles IS: 1477 - Code of practice for painting of ferrous metals in buildings (Parts 1 & 2) IS: 1542 - Specification for sand for plaster

- IS: 1580 - Specification for bituminous compounds for water-proofing and caulking purposes
- IS: 1597 - Code of practice for construction of stone masonry: Part 1 Rubble stone masonry  
IS: 1659 - Specification for block boards
- IS: 1661 - Code of practice for application of cement and cement-lime plaster finishes  
IS: 1834 - Specification for hot applied sealing compound for joint in concrete
- IS: 1838 - Specification for preformed fillers for expansion joint in concrete pavements and structures(non extruding and resilient type): Part 1 Bitumen impregnated fiber
- IS: 1948 - Specification for aluminum doors, windows and ventilators  
IS: 1949 - Specification for aluminum windows for industrial buildings
- IS: 2074 - Ready mixed paint, air-drying, red oxide- zinc chrome, and priming  
IS: 2098 - Asbestos cement building boards
- IS: 2114 - Code of practice for laying in-situ terrazzo floor finish  
IS: 2116 - Specification for sand for masonry mortars
- IS: 2185 - Specification for concrete masonry units (Parts 1,2 & 3)
- IS: 2202 - Specification for wooden flush door shutters (Solid core type): Parts 1 & 2  
IS: 2212 - Code of practice for brickwork
- IS: 2250 - Code of practice for preparation and use of masonry mortars
- IS: 2338 - Code of practice for finishing of wood and wood based materials (Parts 1 & 2)  
IS: 2339 - Aluminum paint for general purposes, in dual container
- IS: 2395 - Code of practice for painting concrete, masonry and plaster surfaces (Parts 1 & 2)  
IS: 2402 - Code of practice for external rendered finishes
- IS: 2571 - Code of practice for laying in-situ cement concrete flooring
- IS: 2572 - Code of practice for construction of hollow concrete block masonry  
IS: 2645 - Specification of integral cement waterproofing compounds
- IS: 2690 - Specification for burnt clay flat terracing tiles: Part 1 Machine made  
IS: 2691 - Specification for burnt clay-facing bricks
- IS: 2750 - Specification for steel scaffoldings  
IS: 2835 - Flat transparent sheet glass
- IS: 2932 - Specification for enamel, synthetic, exterior type (a) undercoating, (b) finishing
- IS: 3007 - Code of practice for lying of asbestos cement sheets - corrugated and (Part 1 & 2) semi-corrugated sheets
- IS: 3036 - Code of practice for laying lime concrete for a waterproofed roof finish
- IS: 3067 - Code of practice of general design details and preparatory work for damp-proofing and water-proofing of buildings
- IS: 3068 - Specification for broken brick (burnt clay) coarse aggregates for use in lime concrete  
IS: 3384 - Specification for bitumen primer for use in waterproofing and damp proofing
- IS: 3461 - Specification for PVC-asbestos floor tiles
- IS: 3462 - Specification for unbacked flexible PVC flooring
- IS: 3495 - Method of test for burnt clay building bricks: Part 1 to 4
- IS: 3536 - Specification for ready mixed paint, brushing, wood primer, pink  
IS: 3564 - Specification for door closers (hydraulically regulated)

- IS: 3696 - Safety code of scaffolds and ladders (Parts 1 & 2)IS: 4020 - Methods of test for wooden flush door: Type test
- IS: 4021 - Specification for timber door, window and ventilator framesIS: 4351 - Specification for steel doorframes
- IS: 4443 - Code of practice for use of resin type chemical resistant mortarsIS: 4457 - Specification for ceramic unglazed vitreous acid resisting tile IS: 4631 - Code of practice for laying epoxy resin floor toppings
- IS: 4832 - Specification for chemical resistant mortars (Part II)IS: 4860 - Specification for acid resistant bricks
- IS: 4948 - Specification for welded steel wire fabric for general use
- IS: 5318 - Code of practice for laying of flexible PVC sheet and tile flooringIS: 5410 - Cement paint, colour as required
- IS: 5411 - Specification for plastic emulsion paint (Parts 1 & 2)IS: 5437 - Wired and figured glass
- IS: 5491 - Code of practice for laying of in-situ granolithic concrete floor topping
- IS: 6041 - Code of practice construction of autoclaved cellular concrete block masonryIS: 6042 - Code of practice for construction of light weight concrete block masonry IS: 6248 - Specification for metal rolling shutters and rolling grilles
- IS: 7193 - Specification for glass fiber base coal tar pitch and bitumen felts
- IS: 7452 - Specification for hot rolled steel sections for doors, windows and ventilatorsIS: 8042 - Specification for white Portland cement
- IS: 8543 - Methods of testing plastics
- IS: 8869 - Specification for washers for corrugated sheet roofing
- IS: 9197 - Specification for epoxy resin, hardeners and epoxy resin composites for floor topping
- IS: 9862 - Specification for ready mixed paint, brushing, bituminous, black, lead-free, acid, alkali, water and chlorine resisting
- IS: 12200- Code of practice for provision of water stops at transverse contraction joints in masonry and concrete dams
- BS: 476 - Methods for determination of the fire resistance of elements of construction (General Principles) (Part – 20) - Methods for determination of the fire resistance of load bearing elements of construction.
- BS: 476 (Part – 21)
- BS: 476 - Methods for determination of the fire resistance of non-load bearing elements of construction (Part – 22)
- Part – IV - National Building code of India

(e) **Flooring**

IS No.	Subject
IS 269	Specification for 33 grade ordinary Portland Cement

IS 401	Code of practice for preservation of timber
IS 451	Technical supply conditions for wood screws
IS 455	Specification for Portland slag cement
IS 661	Code of practice for thermal insulation of cold storages
IS 702	Specification for industrial bitumen
IS 1124	Method of test for determination of water absorption, apparent specific gravity and porosity of natural building stones
IS 1130	Specification for marble (blocks, slabs and tiles)
IS 1141	Code of practice for Seasoning of timber
IS 1200-(Part XI )	Method of measurement of Building and Civil Engineering work (Part 11) paving, floor finishes, dado and skirting
IS 1237- Edition 2.3	Specification for cement concrete flooring tiles
IS 1322	Specification for bitumen felts for water proofing and damp- proofing
IS 1443	Code of practice for laying and finishing of cement concrete flooring tiles

IS 1489 (Part-I)	Specification for Portland pozzolana cement (Part-I) fly ash based
IS 1489-(Part II)	Specification for Portland pozzolana cement (Part II) calcined clay based
IS 1580	Specification for bituminous compounds for water proofing and caulking purpose
IS 2114	Code of practice for laying in-situ terrazzo floor finish
IS 2571	Code of practice for laying in-situ cement concrete flooring
IS 3622	Specification for sand stone (Slab & Tiles)
IS 3670	Code of practice for construction of timber floors
IS 4457	Acid and/or alkali Resistant tiles.
IS 5318	Code of practice for laying of hard wood parquet and wood block floors
IS 5766	Code of practice for laying of burnt clay brick floor
IS 8041	Specification for rapid hardening Portland cement
IS 8042	Specification for white Portland cement
IS 8043	Specification for hydrophobic Portland cement
IS 8112	Specification for 43 grade ordinary Portland cement

IS 12330	Specification for sulphate resisting Portland cement.
IS: 13630 (Part-1 to 15)	Methods of Testing of ceramic tiles
IS 13712	Specification for ceramic tiles; definition, classification characteristic and marking
IS 15622	Specification for pressed ceramic tile

Draft Concession Agreement



**Roofing**

IS. No.	Subject
IS 73	Specification for paving Bitumen
IS 277	Galvanized steel sheets (plain and corrugated)
IS 651	Glazed stoneware pipes and fittings
IS 702	Specification for industrial bitumen
IS 1199	Methods of sampling and analysis of concrete
IS 1200 (PT.IX)	Method of measurements of building and civil engineering works Part - 9 Roof covering(including cladding)
IS 1200 (PTX)	Method of measurements of building and civil engineering works: Part -10 ceiling and lining
IS 1230	Cast iron rain water pipes and fitting

IS 1367 (PT -13)	Technical supply conditions for threaded steel fasteners pt.13 hot dip galvanized coating on threaded fasteners
IS 2095 (PT-1)	Gypsum plaster boards (Pt.1) plain Gypsum plaster boards
IS 2115	Code of practice for flat roof finish: mud phuska
IS 2633	Method of testing uniformity of coating on zinc coated articles
IS 2645	Specification for integral water proofing compounds for cement mortar and concrete
IS 3007 (PT.1)	Code of practice for laying of asbestos cement sheets: part- 1 corrugated sheets
IS 3007 (PT.2)	Code of practice for laying of asbestos cement sheets part- 2 semi- corrugated sheets
IS 3087	Particle boards of wood and other lignocellulosic materials (medium density) for general purposes – specifications
IS 3144	Methods of test for mineral wool thermal insulation materials
IS 3346	Method of the determination of thermal conductivity of thermal insulation materials
IS 3348	Specification for fibre insulation boards
IS 3384	Specification for bitumen primer for water proofing and damp proofing
IS 4671	Expanded polystyrene for thermal insulation purposes
IS 5382	Specification for rubber sealing rings for gas mains, water mains and sewers
IS 5688	Methods of test of performed block type and pipe covering type thermal insulations
IS 6598	Cellular concrete for thermal insulation
IS 7193	Specification for glass fibre base coal tarpitch & bitumen felts (Amendment I)
IS 8183	Bonded mineral wool
IS 10192	Specifications for synthetic resin bonded glass fibre (SRBGF) for electrical purposes.
IS 13592	Unplasticised polyvinyl chloride (UPVC) pipes for soil and Waste discharge system for inside and outside building.
IS 14753	Specifications for polymethyl Methacrylate (PMMA) (Arylic) sheets

IS 14862	Fibre cement flat sheets - specifications
IS 14871	Specifications for products in fibre reinforced cement - Long corrugated or Asymmetrical section sheets and fittings for roofing and cladding.

### General works

Code No.	Subject
IS 63	Whiting for paints and putty
IS 198	Varnish gold size
IS 228	Structural steel (Standard quality)
IS 277	Specification for galvanized steel sheets (Plain and corrugated)
IS 419	Putty for use on window frames
IS 800	Code of practice for use of structural steel in general in steel construction
IS 806	Code of practice for use of steel Tubes in general building construction
IS 808	Dimensions for Hot rolled steel beams, columns, channel and angle sections
IS 812	Glossary of terms relating to welding and cutting metals
IS 813	Scheme of symbols for welding
IS 814	Covered electrodes for manual metal arc welding of carbon and carbon manganese steel
IS 816	Code of practice for use of metal arc welding for general construction in mild steel

IS 817	Code of practice for training and testing of metal arc welders
IS 818	Code of practice for safety and healthy requirements in electric and gas welding and cutting operations
IS 822	Code of procedure for inspection of welds
IS 823	Manual for metal arc welding in mild steel
IS 1038	Steel doors, windows and ventilators
IS 1081	Code of practice for fixing and glazing of metal (Steel and aluminium) doors, windows and ventilators
IS 1148	Hot rolled steel rivet bars (upto 40 mm diameters) for structural purposes
IS 1161	Steel tubes for structural purposes
IS 1182	Recommended practice for radiographic examination of fusion welded butt joints in steel plates

Standard	Title
IS 100- (Pt. VIII)	Method of measurements of steel work and iron works
MORT&H 1983 Part I	Manual for Maintenance of Roads, 1983 of product grade C (Hexagon Head bolt)
MORT&H 1983 Part II	Standard Plans for Single, Double and Triple Cell Box Culverts with and without Earth Cushion
MORT&H	Type Designs for Intersections on National Highways, 1992
MORT&H	Manual for Construction and Supervision of Bituminous Works, 2001
MORT&H	Guidelines for Maintenance Management of Primary, Secondary and Urban Roads
NHAI	Works Manual – 2006
IS 73	Specification for paving bitumen
IS 164	Ready mixed paint for road marking

IS 217	Specification for cut back bitumen
IS 8112	Specification for 43 grade ordinary Portland Cement
IS 278	Specification for galvanized steel barbed wire for fencing
IS 334	Glossary of terms relating to bitumen and tar
IS 383	Specification for coarse and fine aggregate from natural sources for concrete
IS 460	Specification for test sieves
IS 516	Method of test for strength of concrete
IS 702	Specification for industrial bitumen
IS 712	Specification for building limes
IS 1195	Specification for bitumen mastic for flooring
IS 1199	Methods of sampling and analysis of concrete
IS 1203	Method of testing tar and bituminous material, determination of penetration
IS 1205	Method of testing tar and bituminous material determination of softening point
IS 1208	Method of testing tar and bituminous material determination of ductility
IS 1212	Method of testing tar and bituminous material determination of loss of heating
IS 1216	Method of testing tar and bituminous material determination of solubility in carbon-di-sulphide, trichloroethylene
IS 1834	Specification for hot applied sealing compound for joint in concrete
IS 1838 (Pt. 1)	Specification for performed fillers for expansion joint in concrete pavements and structures (non extruding and resilient type/ bitumen impregnated fibre)
IS 2386 (Pt. 1)	Method of test for aggregate for concrete particle size and shape
IS 2386 (Pt. 2) 1963	Method of test for aggregate for concrete estimation of deleterious materials and organic

## Roads

	impurities
IS 2386 (Pt. 3)	Method of test for aggregate for concrete specific gravity, density, voids, absorption and bulking
IS 2386 (Pt. 4)	Method of test for aggregate for concrete mechanical properties
IS 2720 (Pt.V)	Method of test for soil: Determination of liquid and plastic limit.
IS 2720 (Pt. VII)	Methods of test for soils: part VII determination of water content dry density relation using light compaction
IS 2720 (Pt. XXVIII)	Method of test for soil: determination of dry density of soils in place, by sand replacement method
IS 3812	Specification for fly ash for use as pozzolana and admixture
IS 5317	Specification for bitumen mastic for bridges decking and roads
IS 5640	Method of test for determining aggregate impact value of soft coarse aggregates
IS 6241	Method of test for determination of stripping value of road aggregates
IRC:5-2015	Standard Specifications and Code of Practice for Road Bridges, Section I – General Features of Design (Eighth Revision)
IRC:6-2017	Standard Specifications and Code of Practice for Road Bridges, Section-II - Loads and Load Combinations (Seventh Revision)
IRC:7-2017	Recommended Practice for Numbering Culverts, Bridges and Tunnels (Second Revision)
IRC:22-2015	Standard Specifications and Code of Practice for Road Bridges, Section VI – Composite Construction (Limit States Design) (Third Revision)
IRC:24-2010	Standard Specifications and Code of Practice for Road Bridges, Steel Road Bridges (Limit State Method) (Third Revision)
IRC:78-2014	Standard Specifications and Code of Practice for Road Bridges, Section VII- Foundations and Substructure (Revised Edition)
IRC:83-2018 (Part III)	Standard Specifications and Code of Practice for Road Bridges, Section IX – Bearings, Part III: POT, PIN, Metallic Guide and Plane Sliding Bearings (FirstRevision)
IRC:83-2014 (Part IV)	Standard Specifications and Code of Practice for Road Bridges, Section IX – Bearings (Spherical and Cylindrical)
IRC:89-2019	Guidelines for Design and Construction of River Training & Control Works for RoadBridges (Second Revision)
IRC:112-2020	Code of Practice for Concrete Road Bridges (First Revision)
IRC:SP:13-2004	Guidelines for the Design of Small Bridges and Culverts (First Revision)
IRC:SP-105-2015	Explanatory Handbook to IRC:112-2011: Code of Practice for Concrete Roads Bridges
IRC:SP:114-2018	Guidelines for Seismic Design of Road Bridges
IRC: SP: 84-2019	Manual of Specification & Standards for Four Laning of Highways

IRC: 73-2018	Manual of Specification & Standards for Two Laning of Highways with paved shoulder
IRC 92-1985	Guidelines for the design of interchange in urban area
IRC-SP 42-2014	Guidelines of Road Drainage

Draft Concession Agreement

IRC 115-2014	Guidelines for Structural Evaluation and Strengthening of Flexible Road Pavements Using Falling Weight Deflectometer (FWD) Technique” (with CD
IRC:58-2015	Guidelines for the Design of Plain Jointed Rigid Pavements for Highways (Fourth Revision)
IRC 37-2018	Guidelines for the design of Flexible Pavements
IRC: 99-2018.	Guidelines for Traffic Calming Measures in Urban and Rural Areas (First Revision)
IRC: 67-2012.	Code of Practice for Road Signs
IRC: 35-2015.	Code of Practice for Road Markings
IRC:56-2011	Recommended Practices for Treatment of Embankment and Roadside Slopes for Erosion Control
IRC: SP:21-2009	Guidelines on Landscaping and Tree Plantation

(f) **WATER SUPPLY HEADS**

**Water Supply**

BIS. No.	Subject
IS 554	Pipe threads where pressure tight joints are required on the threads- Dimensions, tolerances and designation.
IS 778	Specification for copper alloy gate, and check valves for water works purposes
IS 779	Water meters (domestic type) -Specification
IS 14846	Specification for sluice valves for water works purposes (50 to 1200 mm size)
IS 14845	Resilient Seated Cast Iron Air Relief Valves for Water Works Purposes - CED 3: Sanitary Appliances and Water Fittings
IS 13095	Butterfly valves for general purposes MED 17: Chemical Engineering Plants and Related Equipment
IS 781	Specification for cast copper alloy screw down bib taps and stop valves for water services
IS 782	Specification for caulking lead
IS 909	Underground fire hydrant, sluice valve type-Specification
IS 1239 (Part 1)	Steel tubes tubular and other wrought steel fittings, Part 1- Steel tubes- Specification
IS 1239 (Part 2)	Specification for mild steel tubes tubular and other wrought steel fittings, Part 2-Mild steel tubular and other wrought steel pipe fittings
IS 1536	Centrifugally cast (spun) iron pressure pipes for water gas and sewage- Specification
IS 1537	Specification for vertically cast iron pressure pipes for water, gas and sewage
IS 1538	Cast iron fittings for pressure pipes for water, gas and sewage - Specification
IS 1703	Water fittings - copper alloy float valves (horizontal plunger type)- Specification
IS 2692	Ferrules for water services- Specification

IS 3950	Specification for surface boxes for sluice valves
IS 4736	Specification for Hot-dip Zinc Coatings on mild steel tubes
IS 5312 (Part 1)	Swing type reflex (non return) valves for water works purposes. Part 1- Single door pattern
IS 5312 (Part 2)	Swing type reflex (non return) valves for water works purposes. Part 2- Multi door pattern
IS 5382	Rubber sealing rings for gas mains, water mains and sewers
IS 9762	Specification for polyethylene floats (spherical) for float valves
IS 9763	Plastic Bib taps and stop valves (rising spindle) for cold water services- specifications
IS 15450	PE-AL-PE Pipes for hot and cold-water supplies-Specifications
IS 15778	Chlorinated Polyvinyl Chloride (CPVC) pipes for potable hot and cold water distribution supplies-specifications.
IS 15801	Polypropylene- Random Copolymer Pipes for hot and cold water supplies-Specifications
IS 2685	Code for selection/Installation and Maintenance of Sluice Valve

IS 8329	Centrifugally Cast (Spun) Ductile Iron Pressure Pipes for Water, Gas and Sewage MTD 6: Pig iron and Cast Iron
IS 9523 (2000)	Ductile Iron Fittings for Pressure Pipes for Water, Gas and Sewage MTD 6: Pig iron and Cast Iron
IS 8360-1 (1977)	Fabricated high density polyethylene (HDPE) fittings for potable water supplies, Part 1: General requirements CED 50: Plastic Piping System)

**(g) Drainage**

IS No.	Subject
IS 458	Pre-cast Concrete Pipes (with and without reinforcement).
IS 651	Specification for Salt Glazed Stoneware Pipes and Fittings.
IS 783	Code of Practice for Laying Concrete Pipes
IS 1726	Specification for Cast Iron Manhole Covers and Frames
IS 1729	Cast Iron /Ductile Iron Drainage Pipes and Pipe Fittings Socket and Spigot Series for Over- ground Non-pressure Pipe Line.
IS 4127	Code of Practice for Laying of Glazed Stone Ware Pipes
IS 4885	Specifications for Sewer Bricks
IS 12592	Pre-cast Concrete Manhole Covers and Frames - Specifications
IS 3114	Code or Practice for laying of Cast iron pipes.
IS 5961	Specification for cast iron grating for drainage purpose.
IS 2470 (Part -1)	Code of practice for Installation of septic tank : Part 1 Design criteria and construction

**Sanitary**

BIS. No.	Subject
IS 771 (Pt.1)	Specification for glazed fire clay sanitary appliances: Part 1: General requirements.
IS 771 (Pt.-2)	Specification for glazed fire clay sanitary appliances: Part 2: Specific requirements of kitchen and laboratory sink.
IS 772	Specific action for general requirements for enameled cast iron sanitary appliances.
IS 774	Flushing cisterns for water closets and urinals (Other than plastic cistern)- Specifications.
IS 1300	Phenolic moulding materials.- Specifications
IS 13983	Providing and fixing stainless steel sink
IS 1570 (Part-5)	Schedule for Wrought steel (Stainless Steel and heat resisting steels)
IS 1703	Water fittings- copper alloy float valves (horizontal plunger type) - Specification.
IS 1729	Cast iron /Ductile Iron Drainage Pipes and pipe fittings for Over ground non-pressure pipe line Socket and Spigot Series.
IS 1795	Specification for pillar taps for water supply purposes.
IS 1865	Iron casting with spheroidal or nodular graphite



IS 2267	Polystyrene moulding and extrusion materials - Specifications
IS 2326	Specification for Automatic Flushing Cisterns for Urinals (Other than plastic cisterns)
IS 2548 (Part-1)	Plastic seats and covers for water closets Part 1: Thermo set seats and covers - Specifications
IS 2548 (Part-2)	Plastic seats and covers for water closets Part 2: Thermoplastic seats and covers.- Specifications
IS 2556	Vitreous sanitary appliances (vitreous china) -Specifications
IS 2556 (Part-1)	Part-1: General requirements.
IS 2556 (Part-2)	Part-2: Specific requirements of wash-down water closets.
IS 2556 (Part-3)	Part-3: Specific squatting pans.
IS 2556 (Part-4)	Part-4: Specific requirements of wash basins.
IS 2556 (Part-5)	Part-5: Specific requirements of laboratory sinks.
IS 2556 (Part-6)	Part-6: Specific requirements of Urinals & Partition plates
IS 2556 (Part-7)	Part-7: Specific requirements of accessories for sanitary appliances
IS 2556 (Part -14)	Part-14: Specific requirements of integrated squatting pans.

IS 2556 (Part -15)	Part-15: Specific requirements of universal water closets.
IS 2556 (Part -16)	Part-16: Specific requirements of wash down wall mounted water closets
IS 2963	Specification for Copper alloy waste fittings for wash basins and sinks.
IS 3076	Specification for low density polyethylene pipes for potable water supplies.
IS 3389	Urea formaldehyde moulding materials. - Specifications
IS 3989	Specification for centrifugally cast (spun) iron spigot and socket soil, waste and ventilating pipes fittings and accessories.
IS 4827	Specification for electroplated coating of nickel and chromium on copper and copper alloys.
IS 4984	Specification for high density polyethylene pipes for potable water supplies.
IS 4985	Unplasticised P.V.C. pipes for potable water supply - Specifications.
IS 7231	Plastic flushing cisterns for water closets and urinals - Specifications.
IS 13983	Stainless steel sinks for domestic purposes -Specifications.
IS 15905	Centrifugally Cast Iron Hubless pipes & fittings

**ELECTRICAL  
CODES OF PRACTICE GUIDE**

<b>Standard</b>	<b>Title</b>
IS 1885 (Part-I): 1961	Fundamental definition Electrical power system protection
IS 1885 (Part-XI): 1966	Electrical Measurement
IS 1885 (Part-XXX): 1971	Overhead transmission and distribution of electrical energy
IS 1885 (Part-XXXII): 1993	Cables, conductor and accessories for Electrical Supply
IS 8270: 1976	Guide for preparation of diagrams, charts & tables for electro technology
IS 3043: 1987	Earthing
IS 13234	Guide for short circuit calculations
IS 732:1989	Code of practice for electrical wiring installations (third revision)
IS 8061:1976	Code of practice for design, installation and maintenance of service lines up to and including 650 V
IS 8884:1978	Code of practice for the installation of electric bells and call systems
IS 5578:1984/ IEC 60391 (1972)	Guide for marking of insulated conductors (first revision)
IS 11353:1985/ IEC 60445 (1973)	Guide for uniform system of marking and identification of conductors and apparatus terminals
IS 13234:1991/ IEC 60909: 1988	Guide for short circuit current calculations in three-phase ac systems (superseding IS 5728)
IS 7752 (Part 1):1975	Guide for improvement of power factor in consumer installation: Part 1 Low and medium supply voltages
IS 3646 (Part 1):1992	Code of practice for interior illumination: Part 1 General requirements and recommendations for working interiors (first revision)
IS 3646 (Part 2):1966	Code of practice for interior illumination: Part 2 Schedule of illumination and glare index
IS 3646 (Part 3):1968	Code of practice for interior illumination: Part 3 Calculation of coefficients of utilization by the BZ method
IS 6665:1972	Code of practice for industrial lighting
IS 10118 (Part 1):1982	Code of practice for selection, installation and maintenance of switchgear and control gear: Part 1 General
IS 10118 (Part 2):1982	Code of practice for selection, installation and maintenance of Switchgear and control gear: Part 2 Selection
IS 10118 (Part 3):1982	Code of practice for selection, installation and maintenance of switchgear and control gear:

	Part 3 Installation
IS 10118 (Part 4):1982	Code of practice for selection, installation and maintenance of switchgear and control gear: Part 4 Maintenance
IS 4146:1983	Application guide for voltage transformers (first revision)
IS 4201:1983	Application guide for current transformers (first revision)
IS 5547:1983	Application guide for capacitor voltage transformers (first revision)
IS 2309:1989	Code of practice for protection of buildings and allied structures against lightning (second revision)
IS 3043:1987	Code of practice for earthing
IS 5216 (Part 1):1982	Recommendations on safety procedures and practices in electrical work: Part 1 General (first revision)
IS 5216 (Part 2):1982	Recommendations on safety procedures and practices in electrical work: Part 2 Life saving techniques (first revision)

Draft Concession Agreement

## ELECTRIC FANS

Standard	Title
IS 374:1979	Electric ceiling type fans and regulators (third revision)
IS 2997:1964	Air circulator type electric fans and regulators
IEC: 60665 (1981) IS 2312:1967	Propeller type ac ventilating fans (first revision) Draft Standard issued in wide circulation
IS 3588:1987	Electric axial flow fans (first revision)
IS 3963:1987	Roof extractor units (first revision)
IS 4283:1981	Hot air fans (first revision)
IS 6272:1987	Industrial cooling fans (man coolers) (first revision)
IS 4894:1987	Centrifugal fans (first revision)

## LOW VOLTAGE SWITCH GEAR AND CONTROL GEAR

Standard	Title
IS 4237:1982	General requirements for switchgear and control gear for voltages not exceeding 1000 volts ac or 1200 volts dc (first revision) superseded by IS 13947 (Part 1):1993
IS 6875 (Part 1): 1973	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac & 1200 V dc: Part 1 General requirements superseded by IS 13947 (Part 5/Section 1)
IS 6875 (Part 2): 1973	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac and 1200 V dc: Part 2 Push-buttons and related control switches Superseded by IS 13947 (Part 5/Section 1)
IS 6875 (Part 3): 1980	Control switches (switching devices for control and auxiliary circuits including contactor relays) for voltages up to and including 1000 V ac and 1200 V dc: Part 3 Rotary control switches superseded by IS 13947 (Part 5/Section 1)
IS 10027:2000	Composite units of air-break switches and rewirable type fuses for voltages not exceeding 650 volt ac - Specification (first revision)
IS 4064 (Part 1): 1978	Air-break switches, air break disconnectors, air-break switch disconnectors and fuse-combination units for voltages not exceeding 1000 V ac or 1200 V dc: Part 1 General requirements (revised) superseded by IS 13947 (Part 3): 1993
IS 2675:1983	Enclosed Distribution Fuse Boards and Cut Outs for voltages not exceeding 1000 V A.C. or 1200 V D.C.
IS 8828:1996	Circuit-breakers for over current protection for household and similar installations (second revision)
IS 13032:1991	Miniature circuit breaker boards for voltage up to and including 1 000 Volt ac
IS 12640 (Part 1): 2008	Residual current operated circuit-breakers for household and similar uses: Part 1 circuit-breakers without integral over current protection (RCCBs) (First Revision)
IS 12640 (Part 2): 2008	Residual current operated circuit-breakers for household and similar uses: Part 2 circuit

	breakers with integral overcurrent protection (RCBOs) (First Revision)
IS 2959:1985	Contactors for voltages not exceeding 1000 V ac or 1200V dc (first revision) superseded by IS 13947 (Part 4/ Section 1)
IS 12021:1987	Specification for control transformers for switchgear and control gear for voltages not exceeding 1000 Volt AC
IS 5039:1983	Distribution pillars for voltages not exceeding 1000 volts(first revision)
IS 8623 (Part 1):1993/ IEC 60439-1 (1985)	Specification for low voltage switchgear and control gear assemblies: Part 1 Requirements for type-tested and partially type tested assemblies (first revision).
IS 8623 (Part 2):1993/ IEC 60439-2 (1987)	Specification for low voltage switchgear and control gear assemblies: Part 2 Particular requirements for busbar trunking systems (busways)- (first revision)
IS 8544 (Part 1): 1977	Motor starters for voltages not exceeding 1000 V: Part Direction line ac starters superseded by IS 13947 (Part 4/Section 1): 1993
IS 8544 (Part 2):	Motor starters for voltages not exceeding 1000 V: Part 2 Star-delta starters superseded by IS

1977	13947 (Part 4/ Section 1): 1993
IS 8544 (Part 3/Sec 1): 1979	Motor starters for voltages not exceeding 1000 V: Part 3 Rheostatic motor starters, Section 1 General requirements superseded by IS 13947 (Part 4/Section 1): 1993
IS 8544 (Part 4): 1979	Motor starters for voltages not exceeding 1000 V: Part 4 Reduced voltage ac starters: two step auto-transformer starters superseded by IS 13947 (Part 4/Section 1): 1993

## POWER CABLE

Standard	Title
IS 694:1990/IEC 60227- 1 to 5 (1979)	PVC Insulated cables for working voltages up-to and including 1100 V
IS 694: 2010	Polyvinyl chloride insulated sheathed and unsheathed cables with rigid and flexible conductor for rated voltages up to and including 450/750 V: Part 1 General requirements (fourth revision)
IS 1554 (Part 1):1988/ IEC 60502 (1983)	PVC insulated (heavy duty) electric cables: Part 2 For working voltages up to and including 1100 V (Third revision)
IS 3961 (Part 1):1967	Recommended current ratings for cables: Part 1 Paper insulated lead sheathed cables
IS 4288:1988	PVC insulated (heavy duty) electric cables with solid aluminium conductors for voltages up to and including 1100 V (second revision) (withdrawn)
IS 4289 (Part 1):1984/ IEC 60245-5	Flexible cables for lifts and other flexible connections: Part 1 Elastomer insulated cables (first revision)

## ELECTRIC WIRING ACCESSORIES

Standard	Title
IS 9537 (Part 1):1980/ IEC 60614-1 (1978)	Conduits for electrical installations: Part 1 General Requirements
IS 9537 (Part 2): 1981	Conduits for electrical installations: Part 2 Rigid steel conduits (superseding IS:1653)
IS 3480:1966	Flexible steel conduits for electrical wiring
IS 2667:1988	Fittings for rigid steel conduits for electrical wiring (first revision) Superseded by IS 14768 (Part 2): 2003
IS 3837:1976	Accessories for rigid steel conduits for electrical wiring (first revision)
IS 9537 (Part 4): 1983	Conduits for electrical installations: Part 4 Pliable self-recovering conduits of insulating materials
IS 9537 (Part 5):2000/ IEC 60614-2-3(1990)	Conduits for a electrical installations: Part 5 Pliable conduits of insulating material Superseding IS 6946
IS 3419:1989	Fittings for rigid non-metallic conduits (second revision)

IS 14772:2000/IEC 60670-1(1989)	Enclosures for accessories for household and similar fixed electrical installations Superseding IS 5133 (Part 1 and 2)
IS 2412:1975	Link clips for electrical wiring (first revision)
IS 371:1999	Ceiling roses (third revision)
IS 3854:1997/IEC 60669- 1(1998)	Switches for domestic and similar purposes (second revision)
IS 4615:1968	Switch-socket outlets (non-interlocking type) (Withdrawn)
IS 4160:2005/ IEC 60884- 2-6(1997)	Interlocking switch socket outlets - Specification (first revision)
IS 1293:2005/IEC 60884- 1 (2002)	Plugs and socket outlets of rated voltage upto and including 250 volts and rated current upto and including 16 amperes - Specification (third revision)

## LIGHT FITTINGS AND LUMINAIRES

Standard	Title
IS 1913 (Part 1): 1978	General and safety requirements for luminaires: Part 1 Tubular fluorescent lamps (second revision)
*IS 10322 (Part 1):1982 / IEC 598 - 1(1979)	Luminaires: Part 1 General requirements
IS 10322 (Part 2): 1982 / IEC 598 - 1(1979)	Luminaires: Part 2 Constructional Requirements
IS 10322 (Part 5/Sec. 2):2012	Luminaires: Part 5 Particular requirements, Sec 2 Recessed luminaires (First Revision)
IS 10322 (Part 5/Sec. 3):2012/ IEC 60598-2-3 (1979)	Luminaires: Part 5 Particular requirements, Sec 3 Luminaires for road and street lighting (First revision)
IS 10322 (Part 5/Sec 4):1987/ IEC 60598-2-4 (1979)	Luminaires: Part 5 Particular requirements, Section 4 Portable general purpose
IS 10322 (Part 5/Sec 5):1987/ IEC 60598-2-5	Luminaires: Part 5 Particular requirements, Section 5 Flood lights superseding IS 1947
IS 3287:1965	Industrial lighting fittings with plastic reflectors
IS 1777:1978	Industrial luminaires with metal reflectors (first revision)
IS 2206 (Part 1): 1984	Flameproof electric lighting fittings: Part 1 Well-glass and bulkhead types (first revision)
IS 3528:1966	Waterproof electric lighting fittings
IS 3553:1966	Watertight electric lighting fittings
IS 7537:1974	Road traffic signals
IS 9583:1981/IEC 598-2-22 (1980)	Emergency lighting units

## TRANSFORMERS

Standard	Title
IS 2705 (Part 1):1992/ IEC 60185 (1966)	Current transformers:
IS 6949:1973	Summation current transformers
IS 11171: 1985	Dry type power transformer
IS 2026: 1977	Power Transformer
IS 1180: 1989	Distribution transformers
IS 3639: 1966	Power transformers fittings and accessories
IS 6600: 1972	Guide for loading of oil immersed transformers
IS 2705: 1992	Current transformers Part I to III



IS 3156: 1992	Voltage transformers Part I to III
IS 3156: 1992	Outdoor type three-phase distribution transformers

## SAFETY

Standard	Title
IS 4770:1991	Rubber Gloves for electrical purposes
IS 15625: 2006	Insulating Mats
IS 15505: 2004	HCFC Blend- A Extinguishing System
IS 2171: 1976	Chemical based Fire Extinguishers
IS 2878: 1976	CO <sub>2</sub> based Fire Extinguisher

## FIRE

### (h) LIST OF RELEVANT INDIAN STANDARDS FIRE FIGHTING SYSTEM

IS No.	Title
S-8757	Glossary of terms associated with Fire safety
IS-884	Specification for first-aid hose reel for firefighting
IS-901	Specification for couplings, double male and double female instantaneous pattern for firefighting,
IS-902	Specification (for suction hose couplings for firefighting Purposes (third revision)
IS-903	Specification for fire hose delivery couplings, branch pipe, nozzles and nozzle spanner. (fourth revision)
IS-904	Specification for two and three- way suction collecting heads for firefighting purposes.
IS-907	Specification for suction strainers, cylindrical type for firefighting purpose. (second revision)
IS-908	Specification for fire hydrant, stand post type. (second revision)
IS-909	Specification for underground fire hydrant. Sluice valve type
IS-636	Specification for Non percolating flexible firefighting delivery hose.
IS-7637	Glossary of terms for firefighting equipment.
IS-937	Specification for washers for water fittings for firefighting purposes.
IS-1641	Code of practice for fire safety of buildings (general): General Principles for fire grading and classification.
IS-1642	Code of practice for fire safety of buildings (General): Details of construction. (second revision)
IS-1643	Code of practice for fire safety of buildings (general) ' Exposure hazard. (first revision)
IS-1644	Code of practice for fire safety of buildings (general): Exit requirements and personal hazard. (second revision)
IS-1646	Code of practice for fire safety of buildings(general): Electrical installations. (third revision)
IS-2871	Specification for branch pipe, universal for firefighting purposes.

IS-2930	Functional requirements for hose laying tender for fire brigade use.
IS-5290	Specification for landing valves.
IS-8090	Specification for couplings, branch pipe, nozzle, used in hose reel tubing for firefighting.
IS-8442	Specification for stand post type water and foam monitor for firefighting (first revision)
IS-9972	Specification for automatic sprinkler heads. (first revision)
IS-11101	Specification for extended branch pipe for fire brigade use
IS -12349	Fire protection Safety sign.
IS -12407	Graphic symbols for fire protection plan.
IS -9668	Code of practice for provision and maintenance of water supplies and firefighting.
IS -3844	Code of practice for installation and maintenance of internal fire hydrants and hose reel on premises.
IS -12585	Specification for thermoplastic house (Textile Reinforced)for Water General purpose.
IS -10221	Code of practice for coating and wrapping of underground mild steel pipe lines. (first revision)
IS-15105	Design and installation of fixed automatic sprinkler fire extinguisher system-Code of Practice.
IS -325	Three phase induction motors.

IS-1822	AC Motor starter for voltage not exceeding 1000 volts.
IS -3624	Pressure and vacuum gauges.
IS-1520	Horizontal centrifugal pumps for clear, cold, fresh water.
IS-1239	Mild steel tubes, tubulars and other wrought steel fittings.
IS -3589	Specification for Steel pipes for water, and sewage
IS -6392	Steel pipe flanges.
IS -778	Specification for copper alloy gate, globe and check valves and water works purpose (fourth revision)
IS -2592	Recommendation for methods of measurement of fluid flow by means of orifice plates and nozzles.
IS -732	Code practice for electrical wiring installations.
IS 900	Code of practice for installation and maintenance of induction motors.
IS -1248	Direct acting electrical indicating analogue electrical Measures and their accessories general requirement instruments.
IS-2516	A. C. Circuit breakers for voltages not exceeding 1000 volts.
IS -4047	Heavy duty air break switches and composite units of air break switches and fuses (for voltage not exceeding 1000 volts).
IS -2208	HRC cartridge fuse links up to 650 volts.
IS -1554 (Part I)	PVC insulated (heavy duty) electric cables for working voltage up to and including 1100 volts.
IS:1536	Specification for Centrifugally Cast (Spun) Iron pressure pipes for water, gas & sewage (first revision)
IS 1537	Specification for Vertically Cast-Iron pressure pipes for water, gas & sewage (first revision)
IS:1538	Specification for Cast Iron Fittings for pressure pipes for water, gas & sewage (third revision)
IS:780	Sluice valve for water works purposes (50 to 300 mm size)
IS:13095	Butterfly valves for general purpose.
IS:13039	Code of practice for provision and maintenance of External Hydrant System (first revision)

#### **FIRE DETECTION AND ALARM SYSTEM**

<b>IS No.</b>	<b>Title</b>
694: 2010	Polyvinyl chloride insulated unsheathed and sheathed cables/cords with rigid and flexible conductor for rated voltages up to and including 450/750 V (fourth revision)
1255: 1983	Code of practice for installation and maintenance of power cables up to and including 33 KV rating (second revision)
1554(Part-I): 1988	PVC insulated (heavy duty) electric cables: Part 1 for working voltage up to and including 1100 V (third revision)

2175: 1988	Specification for heat sensitive fire detectors for use in automatic fire alarm system (Second revision)
9968(part 1):1988	Elastomer insulated cables: Part 1 for working voltage up to and including 1100 V (first revision)
11360: 1985	Specification for smoke detectors for use in automatic electrical fire alarm system.
2189: 2008	Code of Practice for selection, installation and maintenance of Automatic fire detection and alarm system (second revision)- Code of Practice
	National Building Code, 2016

IS 15325: Design and Installation of fixed automatic high and medium velocity water spray system

- NFPA-10: Portable Fire Extinguishers
- NFPA-13: Standard for installation of water Sprinkler system
- NFPA-15: Standard for installation of Water Spray fixed system
- NFPA-20: Standard for installation of stationary pump for fire protection system
- NFPA-70: National Electrical Code
- NFPA-72: National Fire Alarm & Signalling Code
- NFPA 2001: Standard for clean agent system
- Local municipality code (If any)

## WAREHOUSES

### Applicable Codes & Standards:

Following codes and standards (latest editions) including their latest agenda shall be followed wherever applicable unless otherwise specified:

Sl No	Code	Description
1	IS:875-I	Code of Practice for Design Dead Loads for Building and Structures
2	IS:875-II	Code of Practice for Design Imposed Loads for Building and Structures
3	IS:875-III	Code of practice for design loads (other than earthquake) for buildings and structures.
4	IS:1893	Criteria for earthquake resistant design of structures.
5	IS:4326	Code of Practice for earthquake resistant design and construction of buildings
6	IS: 800	Code of practice for use of structural steel in general building construction
7	IS: 801	Code of practice for use of cold-formed light gauge steel structure members
8	IS: 802	Code of practice for use of structural steel in overhead transmission line towers
9	IS: 806	Code of practice for use of steel tubes in general building construction
10	IS: 808	Dimensions for hot rolled steel beam, column channel and angle section
11	IS: 811	Specification for cold formed light gauge structural steel sections
12	IS: 813	Scheme of symbols for welding.
13	IS:1079	Hot rolled carbon steel sheet and strip – specification

14	IS:2062	Hot rolled medium and high tensile structural steel – specification
15	IS:4923	Hollow steel sections for structural use.
16	IS:1161	Steel tubes for structural purpose
17	IS:2721	Galvanized steel chain link fence fabric – specification
18	IS :4736	Hot dip zinc coatings on mild steel tubes
19	IS:4759	Hot dip zinc coatings on structural steel and other allied products– Specification
20	IS:1868	Anodic coatings on aluminium and its alloys
21	IS:2395-I	Paintings of concrete, Masonry and plaster surfaces – code of operations and workmanship
22	IS:2395-II	Code of practice for painting concrete, masonry and plaster surfaces: Schedule
23	IS:1477-I	Code of practice for painting of ferrous metals in buildings: pre- treatment
24	IS:1477-II	Code of practice for painting of ferrous metals in buildings: Painting
25	IS:1905	Code of practice for structural use of un-reinforced masonry
26	IS:3067	Code of practice for general design details and preparatory works for damp/water proofing
27	SP:6	Handbook for structural engineers (all parts)
28	SP:7	National Building Code of India
29	SP:16	Design Aids for reinforced concrete to IS:456
30	SP:20	Handbook on masonry design and construction
31	SP:22	Explanatory handbook on codes for earthquake engineering
32	SP:24	Explanatory handbook on Indian Standard Code of Practice for plain and reinforced concrete
33	SP:25	Handbook on causes and prevention of cracks in buildings
34	SP:32	Handbook on functional requirements of industrial buildings
35	SP:34	Handbook of concrete reinforcement & detailing

(i) **Other Codes**

- IS:4000 Assembly of structural joints using high tensile friction grip fasteners
- IS:7205 Safety code for erection of structural steel works
- IS:7215 Tolerance for fabrication of steel structures

(j) **IRC code**

- IRC: SP-13 – Guidelines for the design of small bridges and culverts
- IRC: 5 – Code of practice for Road Bridges (General features of Design)
- IRC: 78 – 2000 – Code of Practice for Road Bridges (Design of substructure and Foundation)
- IRC: SP: 73-2018: Manual of Specifications and Standards for Two Laning of Highways with Paved Shoulders (Second Revision)
- IRC: SP: 84-2019: Manual of Specifications and Standards for Four laning of Highways through a public-private partnership
- IRC: SP: 87-2019: Manual of Specifications and Standards for Six Laning of Highways

through a public-private partnership

- IRC: SP: 19-2001: Survey, Investigation, and Preparation of Road Projects
- IRC: 37-2018: Tentative Guidelines for the design of Flexible Pavements
- IRC: 58-2015: Guidelines for the Design of Plain Jointed Rigid Pavements for Highways (Fourth Revision)
- IRC: 73-1980: Geometric Design Standards for Rural Highways
- IRC: 64-1990: Guidelines for Capacity of Roads in Rural Areas
- IRC: 108-2015: Guidelines for Traffic Forecast on Highways (First Revision)
- IRC: SP: 23-2005: Vertical Curves for Highways
- IRC: SP: 30-2009: Manual on Economic Evaluation of Highway Projects in India (Second Revision)
- IRC: SP: 42-2014: Guidelines on Rural Drainage (First Revision)
- IRC: SP: 50-2013: Guidelines on Urban Drainage (First Revision)
- IRC: SP: 93-2011: Guidelines on Requirements for Environmental Clearance for Road projects
- IRC: 108-2015: Guidelines for Traffic Forecast on Highways
- MoRT&H: Specifications for Road and Bridge Works, 2013 (Fifth Revision)
- MoRT&H: Standard Data Book for Analysis of Rates, 2003 (First Revision)
- AASHTO: A Policy on Geometric Design of Highways and Streets, 2011
- IRC: 5-2015: Standard Specifications and Code of Practice for Road Bridges, Section I - General Features of Design (Eighth Revision)
- IRC: 6-2016: Standard Specifications and Code of Practice for Road Bridges, Section-II Loads and Stresses
- IRC: 22-2015: Standard Specifications and Code of Practice for Road Bridges, Section VI - Composite Construction (Limit States Design) (Third Revision)
- IRC: 24-2010: Standard Specifications and Code of Practice for Road Bridges, Steel Road Bridges (Limit State Method) (Third Revision)
- IRC: 78-2014: Standard Specifications and Code of Practice for Road Bridges, Section VII- Foundations and Substructures (Revised Edition)
- IRC: 112-2011: Code of Practice for Concrete Road Bridges
- IRC: SP: 13-2014: Guidelines for the Design of Small Bridges and Culverts (First Revision)
- IRC: SP: 83-2015: Standard Specifications and Code of Practice for Road Bridges, Section ix Bearings

Draft Concession Agreement