DEVELOPMENT OF ALAMBAGH BUS TERMINAL IN LUCKNOW

DRAFT CONCESSION AGREEMENT

between

U.P.S.R.T.C
Uttar Pradesh State Road Transport Corporation

and

(Developer)

For

Development of Alambagh Bus Terminal in Lucknow, Uttar Pradesh on Design Build Finance Operate and Transfer (DBFOT) basis
CONCESSION AGREEMENT

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

BETWEEN

1 UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION , established under the[Road Transport Act, 1950], represented by its [Managing Director] and having its principal 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;

2 {……….. LIMITED})§, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ……………, (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Second Part.

3 (……..Limited), company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ……………, (hereinafter referred to as the “Selected Bidder/Consortium” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) as a Third Part

§
WHEREAS:

(A) The Government of Uttar Pradesh had entrusted to the Authority the development, maintenance and management of bus terminal/depot cum commercial complex at**2 in the State of Uttar Pradesh)**3 on design, build, finance, operate and transfer (“DBFOT”) basis (“Project”) in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

(B) The Authority had accordingly invited proposals by its [Notice/ Request for Qualification No. *** dated ***] (the “Request for Qualification” or “RFQ”) for short listing of bidders for undertaking the Project and had shortlisted certain bidders including, inter alia, the {the selected bidder/consortium comprising ………… and ……………………….. (collectively the “Consortium”) with ……………….. as its lead member (the “Lead Member”)}.

(C) The Authority had prescribed the technical and commercial terms and conditions, and invited bids (the “Request for Proposals” or “RFP”) from the bidders shortlisted pursuant to the RFQ for undertaking the Project.

(D) After evaluation of the bids received, the Authority had accepted the bid of the {selected bidder/ Consortium} and issued its Letter of Intent No. …….. dated …………… (hereinafter called the “LOI”) to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within [***] days of the date of issue thereof.

(E) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, 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 LOI} including the obligation to enter into this Concession Agreement pursuant to the LOI 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 LOI. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

(G) The Authority has agreed to the said request of the {selected bidder/Consortium and the} Concessionaire, and Authority has accordingly agreed to enter into this Concession Agreement with the Concessionaire for
execution of the Project on DBFOT basis. {Selected Bidder/Consortium} as an confirming party on behalf of the Concessionaire, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:
ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;

(c) references to a “person” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;

(d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;

(e) the words “include” and “including” are to be construed without limitation and shall be deemed to be followed by “without limitation” or “but not limited to” whether or not they are followed by such phrases;

(f) references to “construction” or “building” include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “construct” or “build” shall be construed accordingly;
(g) references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “develop” shall be construed accordingly;

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;

(i) any reference to 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 Lucknow 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 Milestone shall mean and include such date, period or Project Milestone 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 “reorganisation” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;

(s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that
agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(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 Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

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

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

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

1.4 Priority of agreements and errors/discrepancies

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

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.
Part II

The Concession
ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

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

(a) construction and procurement of the Bus Terminal and [Commercial Complex] on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;

(b) operation and maintenance of the Bus Terminals accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.
ARTICLE 3

GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “Concession”) for a period of [32] years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.

Provided that in the event the Concessionaire shall have discharged its obligations without any material breach thereof for a period of [32 (thirty)] years from the Appointed Date, it shall have a right of first refusal in the event the Authority invites fresh bids for selection of a new concessionaire after the expiry of the Concession Period by efflux of time. For the avoidance of doubt, material breach shall for the purposes hereof mean Suspension and/or cumulative levy of Damages exceeding a sum equivalent to Performance Security.

It is expressly agreed between the Parties that the first right of refusal shall mean that the Concessionaire will have a right to match the financial bid of the bidder selected without itself participating in such bidding process, if any, for undertaking the Project through a competitive bidding, after the expiry of the Concession Period by efflux of time. It is expressly agreed between the Parties that the terms and conditions for such additional period of [30] years after the expiry of the Concession Period shall be determined by the Authority.

Provided [further] that the in the event Concessionaire successfully matches the financial bid of the bidder selected, if any, the Concessionaire shall have a right to undertake the Project for an additional period of [30] years on the terms and conditions as specified in such bidding document.

It is expressly agreed between the Parties, in the event, no bidder is selected through the competitive bidding process and/or no bidder participates in the process for undertaking the Project, as the case may be, the Concessionaire may by notice to be given no later than the [180] days from the date of Termination seek extension of the additional [30] years and in such an event, it may be entitled to an additional period of [30] years, at the discretion of the Authority on the terms and conditions, specified in this Concession Agreement.
3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

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

(b) finance and construct the Bus Terminal;

(c) manage, operate and maintain the Bus Terminal;

(d) demand, collect and appropriate Fee from Users liable for payment of Fee for using the Bus Terminal or any part thereof and refuse entry of any Users if the Fee due is not paid;

(e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;

(f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

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

3.1.3 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the Concession hereby granted shall, without prejudice to the provisions of Clause 3.1.2, entitle the Concessionaire to undertake development, operation and maintenance of the real estate at the Site specified in Schedule-A, subject to the conditions stipulated in Schedule-B and Schedule-D, and to exploit such development for commercial purposes (the “Commercial Complex”) with the right to sub-license any or all parts thereof by means of Project Agreements.
ARTICLE 4

CONDITIONS PRECEDENT

4.1 Conditions Precedent

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

4.1.2 The Concessionaire may, upon providing the Performance Security to the 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 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Concessionaire the Right of Way to the Site in accordance with the provisions of Clause 10.3.1;

[(b) procured for the Concessionaire the Right of Way to *****]5

[(c) procured all Applicable Permits relating to environmental protection and conservation of the Site:]6

[Provided that the Authority may from time to time by notice extend, for up to an aggregate of 6 (six) months, the period for procuring the approval set forth in Sub-clause (c) above.]

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

(a) provided Performance Security to the Authority;

(b) executed and procured execution of the Escrow Agreement;

(c) executed and procured execution of the Substitution Agreement;

(d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

5.
6.
(e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

(f) delivered to the Authority 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;

(g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties setforth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement;

(h) procure and provide the bank guarantee for an amount which shall be equal to the difference between the cumulative of the second and third Tranche of the Upfront Premium and Performance Security; 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:

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. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

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

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

4.2 Damages for delay by the 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 of 20% (twenty percent) of the Performance Security.
4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day’s delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.
ARTICLE 5

OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Bus Terminal 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, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement carry out the following but not be limited to:

a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Bus Terminal;

c) perform and fulfill its obligations under the Financing Agreements;

d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

e) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;

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

g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

i) ensure smooth and seamless operation of the bus terminal including managing arrivals and departures of the buses, providing basic passenger amenities as per the instructions of the Authority during the construction of the project facilities.
j) transfer the Bus Terminal and the **Commercial Complex** to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

k) Develop a centralized covered bus terminus with adequate number of bus bays along with RCC yard area, passenger movement spaces, furniture fixtures, electrical fittings, utilities and other related requirements for all project sites.

l) At places where bus stations and workshops/ depots are adjoining, the development of workshops unit with necessary structural provisions and RCC yard, furniture fixtures, electrical fittings with minimum 6 meters of working/ maintenance shed height with no access from and/ to commercial areas as a mandatory requirement.

m) Public amenities like ablution units etc.

n) All the passenger amenities, Workshop facilities as well, as UPSRTC staff facilities shall be maintained hygienic, neat and clean during the concession period.

o) Accesses either through staircases, overbridges or underpasses for movement of pedestrians from one platform to the other in a safe and fully secured manner.

p) A dedicated office for UPSRTC staff with a sufficient usable area along with change rooms and toilets as per the specifications of UPSRTC shall be made available unconditionally and free of cost for the entire concession period on ground and first floors only.

q) All the facilities for plumbing, internal electrification and all the other allied works to render the office functional (partitions excluded).

r) Facility for parking adequate number of 4 wheelers, 3 Wheelers and 2 wheelers of passengers and commercial area users.

s) Accommodating the existing Food Plaza & Modern Toilets (Under B.O.T) adequate and requisite spaces to operate upon within the same premises or suitably compensating them by honoring the stipulated terms and conditions as per the current contractual agreements/ obligations of UPSRTC.

t) All the other allied facilities for fire protection, accesses in the form of ramps, protective railings, ventilation system etc.

u) Day to day operation and management of the bus station facilities as per the DCA.

5.2 **Obligations relating to Project Agreements**

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire shall not sub-license, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Complex without prior written approval of the Authority, which approval the Authority may, in its discretion, deny if such sub-license, assignment or Encumbrance has or may have a material adverse effect on the rights and obligations of the Authority under this Agreement or Applicable Laws; provided that the provisions of this Clause 5.2.4 shall not apply where the Concessionaire grants a sub-license for a cumulative period, including any renewals thereof, not exceeding 11 (eleven) months. For the avoidance of doubt, it is agreed that if the Authority does not deny the approval required under this Clause 5.2.4 within a period of 60 (sixty) days from the date of receiving a notice alongwith full particulars and documents from the Concessionaire, the approval shall be deemed to have been granted to the extent such sub-license, assignment or Encumbrance, as the case may be, is in accordance with the provisions of this Agreement.

5.2.5 Notwithstanding anything to the contrary contained in Clause 5.2.4, the Concessionaire shall not sub–licence, assign or in any manner create an Encumbrance on any Project Asset forming part of Commercial Complex at any time prior to the [(***)anniversary] of the Appointed Date. For the avoidance of doubt, the restriction imposed herein shall not apply to assignment under the Substitution Agreement.
5.2.6 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.7 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the 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 the Concessionaire 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 expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

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

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

(i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
(ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Clause 5.3.2:

(a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Concessionaire;

(b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will
always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors 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 ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

5.6 Sole purpose of the Concessionaire

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

5.7 Branding of Bus Terminal

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

5.8 Facilities for physically challenged and elderly persons

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

5.9 Obligations relating to payment of Impact Fee

The Parties agree that in the event the Concessionaire chooses to utilize the non-commercial FAR over and the above the Site, it shall be liable to pay the relevant Government Instrumentality the fees in accordance with the Applicable Laws for utilizing such the non-commercial FAR.
ARTICLE 6
OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

(a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;

(b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(c) procure that no barriers are erected or placed on or about the Site 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) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Bus Terminal;

(e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate Users on the Bus Terminal:

(f) assist the Concessionaire in procuring police assistance for removal of trespassers and security on or at the Bus Terminal;

(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 the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

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

REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire and the {Selected Bidder/Consortium} represents and warrants to the Authority that the Concessionaire and/or {Selected Bidder/Consortium}, as the case may be:

(a) is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) 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) is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or
which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) 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) 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/ lead members of consortium}, hold not less than 26% (twenty six percent) of its issued and paid up Equity as on the date of this Agreement; and that no member of the Consortium shall hold less than 10% (ten percent) of such during the Concession Period.

(l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Intent, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(n) all its rights and interests in the Bus Terminal shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits
or will omit to state a material fact necessary to make such representation or warranty not misleading;

(p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and

(q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Qualification and Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the 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 Bus Terminal up to the Appointed Date; and

(h) it has good and valid right to the Site, and has power and authority to grant a licence in respect thereto to the Concessionaire.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties
untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.
ARTICLE 8

DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the 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.
Part III
Development and Operations
ARTICLE 9

PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessioner has submitted Bank Guarantee as the Performance Security in the form set forth in Schedule F for the amount of Rs. .........., the details of which are mentioned below:

a. Name of issuing Bank: ........
b. Date of issue: ............
c. Validity period: ............
d. In favour of: ............

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke, encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default. Upon such invocation, 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 37. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of [90 (ninety)] days for remedying the Concessionaire Default, and in the event of the Concessionaire not curing its default within such Cure Period, the Authority shall be entitled to invoke, encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date, but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 20% (twenty per cent) of the Total Project Cost. Provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith after obtaining requisite performance guarantee.
9.4 Performance Guarantee

9.4.1 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority no later than [90] days prior to expiry of the Performance Security, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. ***** crore (Rupees ***** crore)\(^8\) in the form set forth in Schedule-FF (the “Performance Guarantee”). Until such time the Performance Guarantee is provided by the Concessionaire pursuant hereto and the same comes into effect, notwithstanding anything contained in clause 9.3 the Performance Security shall remain in force and effect, and upon such provision of the Performance Guarantee pursuant hereto, the Authority shall release the Performance Security to the Concessionaire.

9.4.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Guarantee is not provided by the Concessionaire within a period of [90] days prior to expiry of the Performance Security, the Authority may invoke and encash the Performance 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.

9.5 Appropriation of Performance Guarantee

Upon occurrence of a Concessionaire Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to invoke, encash and appropriate the relevant amounts from the Performance Guarantee as Damages for such Concessionaire Default. Upon such invocation, encashment and appropriation from the Performance Guarantee, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Guarantee, and in case of appropriation of the entire Performance Guarantee provide a fresh Performance Guarantee, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Guarantee as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Guarantee, 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 invoke, encash and appropriate such Performance Guarantee as Damages, and to terminate this Agreement in accordance with Article 37.

\(^8\) Calculated as per Annexure – II of the RFQ Document
9.6 **Release of Performance Guarantee**

The Performance Guarantee shall remain in force and effect for the entire period of the Concession period and subject to provisions of Article 9.5, shall be released after 180 (one hundred and eighty) days of expiry of the Concession Period or Termination, whichever is earlier, in accordance with this Agreement.
ARTICLE 10

RIGHT OF WAY

10.1 The Site

The site of the Bus Terminal shall comprise the real estate 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 real estate required for the Bus Terminals as set forth in Schedule-A and includes Commercial Complex.

10.2 Licence, 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.

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

10.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that Bus Terminal or an alternative thereof are open to traffic at all times during the Construction Period.
10.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the licence in respect of the Site shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the 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.

10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that the Concessionaire shall be entitled to exercise usufructory rights thereon during the Concession Period.

10.3 Procurement of the Site

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

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way such that the Appendix shall not include more than 20% (twenty per cent) of the total area of the Site required and necessary for the Bus Terminal, and in the event Financial Close is delayed solely on account of delay in grant of such vacant access and Right of Way,
the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

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 hand over, no later than 90 (ninety) days from the Appointed Date, the Right of Way to the Concessionaire in respect of all land included in the Appendix, and in the event of delay for any reason other than Force Majeure or breach of this Agreement by the Concessionaire, it shall pay to the Concessionaire Damages in a sum calculated at the rate of Rs. 50 (Rupees fifty) per day for every 1,000 (one thousand) square metres or part thereof, commencing from the [91st (ninety first)] day of the Appointed Date and until such Right of Way is procured.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice. Provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on the date of Tests on account of the delay or denial of such access thereto. For the avoidance of doubt, it is expressly agreed that Construction Works on all lands for which Right of Way is granted within [90 (ninety)] days of the Appointed Date shall be completed before the Project Completion Date. It is further agreed that the obligation of the Concessionaire to complete the affected Construction Works shall subsist so long as the Authority continues to pay the Damages specified herein, and upon the Authority ceasing to pay such Damages after giving [60 (sixty)] days’ notice thereof to the Concessionaire, the obligation of the Concessionaire to complete such works on such part of the Site shall cease forthwith. It is also expressly agreed that completion of the respective Construction Works within the time determined by the Independent Engineer hereunder shall be deemed to be Project Milestones for the purposes of levy and recovery of Damages under and in accordance with the provisions of Clause 12.4.2.

10.4 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 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the Authority and Independent Engineer

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

10.8 Geological and archaeological finds

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

ARTICLE 11

UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

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

11.2 Shifting of obstructing utilities

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

11.3 New utilities and roads

11.3.1 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. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Bus Terminal in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice require the Concessionaire to connect any adjoining road to the Bus Terminal. Upon receipt of a notice hereunder, the
connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority’s cost in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Bus Terminal, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and period as determined by the Independent Engineer. For the avoidance of doubt, any connecting road constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiary entity in accordance with the provisions of this Clause.

11.4 Felling of trees

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

11.5 Reasonable Support of the Authority

The Parties agree that the Authority shall assist the Concessionaire with all reasonable support to the Concessionaire required for fulfilment of all obligations specified in Article 11.

ARTICLE 12

CONSTRUCTION OF THE BUS TERMINAL

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

(a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G;
(b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement;

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and

(d) make its own arrangements for quarrying of materials needed for the Bus Terminal under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing road(s) to the Bus Terminal so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficient progress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the Bus Terminal including seamless and hassle free management of the arrival and departures of the UPSRTC owned, controlled fleet services, providing basic passenger amenities at the Bus Terminal including passenger concourse area, drinking water facility, toilet blocks, basic stalls etc as shall be specified by the Authority.

12.3 Drawings

In respect of the Concessionaire’s obligations relating to the Drawings of the Bus Terminal as set forth in Schedule-H, the following shall apply:

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;

(b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards;
(c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;

(d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;

(e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;

(f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to the Bus Terminal, finished road level, location and layout of the Ticket Counter[s], Workshop[s], Authority’s Office and general arrangement drawings, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and

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

12.4 Construction of the Bus Terminal

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of the Bus Terminal as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 540th days from the Appointed Date shall be the scheduled date for completion of the Project (the “Scheduled Completion Date”) and the Concessionaire agrees and undertakes that construction of the Bus
Terminal shall be completed on or before the Scheduled Completion Date. For the avoidance of doubt, it is agreed that the Project Completion Schedule and Scheduled Completion Date shall not apply to Commercial Complex.

12.4.2 The Concessionaire shall construct the Bus Terminal in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the 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 Milestone is achieved. Provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above. Provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4.3 In the event that the Bus Terminal is not completed within 90 days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.
ARTICLE 13
MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

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

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

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

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that the Bus Terminal 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 Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction Works

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

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “Preservation Costs”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the 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 Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended
pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.
ARTICLE 14

COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Bus Terminal, the Concessionaire shall notify the Independent Engineer of its intent to subject the Bus Terminal to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days notice to the Independent Engineer.

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

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, the Concessionaire shall apply to the concerned Development Authority/ Urban Local Body and obtain the Completion Certificate. Based on the aforementioned compliances, the Independent Engineer shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-J (the “Completion Certificate”). For avoidance of doubt, the Concessionaire shall solely responsible to procure completion certificate(s) from the relevant authorities under the Applicable Laws necessary and/or required for the Bus Terminal and Commercial Complex, if any, failing which the Independent Engineer shall not provide the Completion Certificate to the Concessionaire. It is provided that the Concessionaire shall not enter into any sub licensing agreement prior to the issuance of the Completion Certificate.
14.3 **Provisional Certificate**

14.3.1 The Independent Engineer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the “Provisional Certificate”) if the Tests are successful and the Bus Terminal can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Independent Engineer and the Concessionaire (the “Punch List”); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the 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 Bus Terminal, if at least [75% (seventy five per cent works)] of the Bus Terminal has been completed. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part.

14.4 **Completion of Punch List items**

14.4.1 All items in the Punch List shall be completed by the Concessionaire within [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 Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority to terminate this Agreement.
14.5 Withholding of Provisional Certificate

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

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may, at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate under Clause 14.3, and such direction shall be complied forthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.
ARTICLE 15
ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Bus Terminal and Commercial Complex shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate or the Provisional Certificate is issued (the “COD”). The Bus Terminal and Commercial Complex shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with provisions of Article 27 and that the entry of Bus Terminal or part thereof into commercial service shall always be subject to compliance with the provisions of Clause 18.3 and Clause 26.2.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.
ARTICLE 16

CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works which are related and necessary to the Bus Terminal 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. The cost of change of scope of work shall not exceed 10% of total project cost.

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

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

16.2 Procedure for Change of Scope

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

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

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Authority to its contractors, along with the proposed premium/discount on such rates; provided that the cost incurred by
the Concessionaire in providing such information shall be reimbursed by the Authority to the extent such cost is certified by the Independent Engineer as reasonable.

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

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply mutatis mutandis to the works undertaken by the Concessionaire under this Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the Independent Engineer. 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 Engineer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borne by the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five per cent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed by the Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180 (one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall,
to the extent borne by the Concessionaire, be deemed to form part of the actual capital cost of the Project.

16.4 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 Bus Terminal. 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 Bus Terminal and issuing the Provisional Certificate.

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

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Authority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding. Provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority\(^5\), and thereupon securing the award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in the bidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistance and cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimises the disruption in operation of the Bus Terminal. 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

\(^5\) The Authority shall transfer 75% (seventy five percent) of the amount so received to the first ranked bidder whose bid shall have been matched by the Concessionaire.
16.6.1 If the Concessionaire shall have failed to complete any Construction Works on account of Force Majeure or for reasons solely attributable to the Authority, the Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled. For the avoidance of doubt, it is agreed that in the event such reduction in Scope of the Project causes or will cause a reduction in net after-tax 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.

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply mutatis mutandis, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.
ARTICLE 17

OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

(a) permitting safe, smooth and uninterrupted flow of traffic on the Bus Terminal during normal operating conditions;

(b) minimising incidents affecting the safety and use of the Bus Terminal by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(c) carrying out periodic preventive maintenance of the Bus Terminal;

(d) undertaking routine maintenance including prompt repairs of Ticket Counters, Workshops, Authority’s Office and other infrastructure as mentioned in the Operation and Maintenance Schedule;

(e) undertaking major maintenance such as per the Maintenance Schedule of the major infrastructure in the Bus Terminal;

(f) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Bus Terminal;

(g) protection of the environment and provision of equipment and materials therefor;

(h) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Bus Terminal;

(i) maintaining a public relations unit to interface with and attend to suggestions from the Users, passengers, government agencies, media and other agencies;

(j) complying with Safety Requirements in accordance with Article 18;

(k) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;

(l) maintaining punctuality and reliability in operating the Bus Terminal; and
17.1.2 The Concessionaire shall remove promptly from the Bus Terminal all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Bus Terminal in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried to and deposited at a convenient location as specified by the Authority.

17.1.3 The Concessionaire shall maintain, in conformity with Good Industry Practice, all stretches of approach roads or other structures situated on the Site but not forming part of the Bus Terminal.

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

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

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

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “Maintenance Programme”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

(m) maintaining a high standard of cleanliness and hygiene on the Bus Terminal.
17.1 The Concessionaire shall prepare and maintain a Maintenance Programme specifying:

(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 Bus Terminal;
(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.

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

17.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.1 and 17.2 shall apply mutatis mutandis to such modifications.

17.5 Safety, breakdowns and accidents

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

17.5.2 The Concessionaire’s responsibility for rescue operations on the Bus Terminal shall include safe evacuation of all Users, passengers and staff from the affected area as an initial response to any particular incident and shall also include prompt removal of debris or any other obstruction, which may endanger or interrupt the smooth functioning of the Bus Terminal.

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 Bus Terminal, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Bus Terminal to Users and passengers 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 Bus Terminal 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 Bus Terminal and shall notify the Authority of the same without any delay.

17.6.3 Any decommissioning or closure of any part of the Bus Terminal and the re-commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Section closure

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

17.7.2 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated section for the period specified therein, and in the event of any delay in re-opening such section, the Concessionaire shall pay Damages to the Authority calculated at the rate of 0.1% (zero point one per cent) of the Performance Guarantee for that section, for each day of delay until the section has been re-opened for traffic.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Performance Guarantee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer. Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

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

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

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

17.10 Overriding powers of the Authority

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

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 17.10.2 and take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.
17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Bus Terminal 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 34. 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 Bus Terminal

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

17.12 Modifications to the Bus Terminal

The Concessionaire shall not carry out any material modifications to the Bus Terminal save and except where such modifications are necessary for the Bus Terminal to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Independent Engineer may make within 15 (fifteen) days of receiving the Concessionaire’s proposal. For the avoidance of doubt, if any modification to the Bus Terminal has a material effect on the safety of Users, the same shall be subject to safety related certification in accordance with Applicable Laws and the procedure specified in Clause 18.3. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

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

(a) an event of Force Majeure;

(b) measures taken to ensure the safe use of the Bus Terminal 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 Bus Terminal.

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected or placed by any Government Instrumentality on the Bus Terminal except for reasons of Emergency, national security, or law and order.

17.15 Advertising on the Bus Terminal

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall diminish the aesthetic quality of the Bus Terminal or violates Applicable Laws. All advertising on the Bus Terminal shall also conform to Good Industry Practice.
ARTICLE 18

SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users, passengers, staff and all other visitors. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Bus Terminal, and shall comply with the safety requirements set forth in Schedule-L (the “Safety Requirements”).

18.1.2 The Authority shall appoint an experienced and qualified firm or organisation (the “Safety Consultant”) for carrying out safety audit of the Bus Terminal in accordance with the Safety Requirements, and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project, and works and services, if any, not forming part of the Scope of the Project shall be undertaken in accordance with the provisions of Article 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the “Safety Fund”) to be funded, owned and operated by the Authority or a substitute thereof.
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 Engineer a monthly report stating in reasonable detail the condition of the Bus Terminal including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, such report shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.2 Inspection

The Independent Engineer shall inspect the Bus Terminal 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.

19.3 Tests

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

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.
19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have brought the Bus Terminal into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Bus Terminal 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.

19.5 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Bus Terminal relating to the safety and security of the Users, Bus Terminal and passengers. A weekly and monthly summary of such reports shall also be sent within three days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Bus Terminal shall include:

(a) death or injury to any person;
(b) damaged or dislodged fixed equipment;
(c) any obstruction on the Bus Terminal, which results in slow down of the services being provided by the Concessionaire;
(d) disablement of any equipment during operation;
(e) communication failure affecting the operation of Bus Terminal;
(f) smoke or fire;
(g) flooding of Bus Terminal; and
(h) such other relevant information as may be required by the Authority or the Independent Engineer.
ARTICLE 20

SECURITY

20.1 Security

20.1.1 The Authority acknowledges and agrees that unless otherwise specified in this Agreement it shall, at its own cost and expense, provide or cause to be provided security within the limits of the Bus Terminal for the prevention of terrorism, hijacking, sabotage and/or similar acts or occurrences; provided that the Authority and the Concessionaire may at any time mutually enter into an agreement to jointly provide security services in the Bus Terminal.

20.1.2 The Concessionaire shall provide and maintain perimeter fencing or other suitable protection around the Bus Terminal and shall be responsible for the security arrangements within the Bus Terminal 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 within and around the Bus Terminal. The Concessionaire shall not be entitled to any compensation for disruption of its operations or loss or damage resulting from the Authority’s actions or the actions of any organisation authorised by the Authority other than those resulting from wilful or grossly negligent acts or omissions of such organisation. The Authority agrees that it shall cause the relevant organisations to take such actions as reasonably deemed necessary by them, without unduly or unreasonably disrupting the operations of the Bus Terminal 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 Authority in the discharge of their obligations thereunder.

20.1.4 Subject to the rights of the Concessionaire under this Clause 20.1, the Authority or any agency duly authorised by it shall be entitled to inspect and search all Buses and to search any person or vehicle entering the Site or departing there from, without unduly or unreasonably disrupting the operations of the Bus Terminal.

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

20.1.6 The Authority shall ensure and procure that the personnel of the Concessionaire and all its contractors, suppliers, sub-contractors and agents, passengers and the Users of the Bus Terminal are allowed free ingress and egress from the limits of the Bus Terminal without any unreasonable interference by the personnel of the Authority, including the security personnel employed by or on behalf of the Authority.
20.1.7 The Authority and the Concessionaire shall jointly make best endeavours to ensure that the security of the Bus Terminal 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.
ARTICLE 21

KEY PERFORMANCE INDICATORS

21.1 Key Performance Indicators

Without prejudice to the obligations specified in this Agreement, the Concessionaire shall operate the Bus Terminal such that it achieves or exceeds the performance indicators specified in this Article 21 (the “Key Performance Indicators”) and set forth in Operation and Maintenance Schedule of this Agreement.

21.2 Monthly status report

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish a monthly report stating in reasonable detail the compliance with all the Key Performance Indicators specified in this Article 21 along with an analysis of the reasons for failures, if any, and the strategies for addressing the same and for otherwise improving the operational performance of the Bus Terminal. The monthly report shall include a quantification of the Damages calculated in accordance with Clause 21.3

21.3 Penalty for shortfall in performance

The Concessionaire shall ensure and procure compliance of each of the Key Performance Indicators specified in this Article 21 and for any shortfall in average performance during a quarter, it shall pay Damages within 30 (thirty) days of the quarter in which the shortfall occurred. The Damages due and payable under this Clause 21.3shall be determined at the rate of [1% (one per cent) of the total revenue from Fee in the respective quarter for every shortfall of 10% (ten per cent)] in any single performance indicator specified in this Article 21; provided, however, that the Authority may waive the Damages, in part or full, if it is satisfied that the Concessionaire has been carrying out its obligations diligently and efficiently and that the shortfall to be waived was on account of reasons beyond the control of the Concessionaire.

21.4 ISO certification

The Concessionaire shall, within 6 (six) months from COD, achieve and thereafter maintain throughout the Concession Period, ISO 9001:2000 certification or a substitute thereof for all the facilities at the Bus Terminal, and shall provide a certified copy thereof to the Authority forthwith.
21.4.2 In the event of default in obtaining the certification specified in Clause 21.5.1, the Concessionaire shall, within 15 (fifteen) days thereof, submit to the Authority an action plan that sets out the actions proposed to be taken by the Concessionaire for rectifying its deficiencies and obtaining such certification for all facilities at the Bus Terminal.

21.4.3 If the period of default in obtaining the ISO certification under this Clause 21.5 shall exceed a continuous period of 3 (three) months, the Concessionaire shall thereafter pay Damages to the Authority in an amount equal to [2% (two per cent)] of the total monthly revenue from Fees for every 1 (one) month of default.

21.5 Passenger Charter

The Concessionaire shall publish and implement a charter articulating the rights and expectations of Users and passengers (the “Passenger Charter”) substantially in the form specified in Schedule-N. The Concessionaire shall at all times be accountable and liable to Users and passengers in accordance with the provisions of the Passenger Charter and Applicable Laws.
ARTICLE 22

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ARTICLE 23

INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firms or bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the “Independent Engineer”). The appointment shall be made no later than 90 (ninety) days from the date of this Agreement and shall be for a period of 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-P to be the Independent Engineer for a term of 3 (three) years, and such procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in such an Agreement to be entered into with it. For the avoidance of doubt, the Parties expressly agree that the functions of the Independent Engineer under this Article 23 shall not include Commercial Complex.

23.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions.

23.3 Remuneration

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

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek
termination of the appointment of the Independent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorised signatories

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

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
Part IV
Financial Covenants
ARTICLE 24

FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day of delay, and for a further period not exceeding [80 (eighty)] days, subject to payment of Damages at the rate specified in Clause 4.3; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the 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.

24.1.2 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.

24.2 Termination due to failure to achieve Financial Close

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

24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Close has not occurred solely as a result of the 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 25

PREMIUM

25.1 Premium

The Concessionaire acknowledges and agrees that as set forth in the Bid, it shall pay to the Authority a premium in the form of an upfront fee ("Upfront Premium") as set forth in Clause 26.2.1.
ARTICLE 26
CONCESSION FEE

26.1 Concession Fee

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

26.2 Upfront Premium

26.2.1 The Concessionaire agrees and undertakes to pay a sum of Rs. …………… (Rupees ………………….) by way of an Upfront Concession Fee, which is due and payable to the Authority in accordance with Clause 26.2.2

26.2.2 The Concessionaire agrees and undertakes to pay the Upfront Premium in the following tranches specified in this Agreement (“Tranche”):

(a) First Tranche- 50% (fifty per cent) of the Upfront Premium not later than [30] days before the Effective Date;

(b) Second Tranche- 25% (twenty five per cent) of the Upfront Premium not later than [1st (first) anniversary] of the Effective Date; and

(c) Third Tranche- 25% (twenty five per cent) of the balance Upfront Premium not later than [18 months] from the Effective Date.

26.2.3 In the event that (i) the Concessionaire does not procure the fulfilment of any or all of the payment obligation set forth in Clause 26.2.2 and (ii) the delay has not occurred as a result of failure to fulfil the obligations 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 0.2% (zero point two per cent) of the Performance Security for each day’s delay until the fulfilment of such aforementioned payment obligations specified in Clause 26.2.2, subject to a maximum of 20% (twenty percent) of the Performance Security. For avoidance of doubt, it is agreed that the maximum period of delay shall be calculated accordingly.

26.2.4 It is agreed between the Parties that in the event of failure to pay the any and/or all Tranches of the Upfront Premium beyond the delay specified in Clause 26.2.3 above, the non-payment of Upfront Premium shall constitute an Concessionaire Default and the same shall be dealt in accordance with Clause 37.
26.2.5 Release of bank guarantee upon payment of payment of Upfront Premium

The bank guarantee for the second and third Tranche shall remain in force and effect till the period for which the second and third Tranche of Upfront Premium subject to provisions of Clause 26.2 is paid in full by the Concessionaire and shall be released after [**] days of expiry after the payment of the second and third Tranche of the Upfront Premium is paid by the Concessionaire.

26.3 Annual Concession Fee

26.3.1 Without prejudice to the provisions of Clause 26.1 and Clause 26.2, the Concessionaire agrees to pay to the Authority an amount of Rupees [***] to be calculated at the rate of 2% (two per cent) of the prevailing circle rates as on the [30] (thirty) days prior to the Effective Date, as consideration for the Commercial Complex (“Annual Concession Fee”).

26.3.2 The Parties hereto acknowledge and agree that the Annual Concession Fee as specified in Clause 26.3.1 (the “Base Annual Concession Fee”) shall be revised annually on April 1; provided, however, that such revision shall not be effected until a period of 6 (six) months has elapsed from the date of the immediately preceding determination of Annual Concession Fee hereunder. For e.g if the concession agreement is signed after 6 months of the financial year (say October 10, 2014) the next revision with 5% CAGR will take place w.e.f. April 1, 2016, at the same time for agreement executed on or before 30th September 2014 the revision of ACF with 5% CAGR will be effective from April 1, 2015.

26.3.3 The Authority hereby acknowledges and agrees that it is not entitled to any revision of Annual Concession Fee except in accordance with the express provisions of this Agreement.

26.4 Delay and default in payment of the Annual Concession Fee.

26.4.1 In the event that (i) the Concessionaire does not procure the fulfilment of the payment obligation set forth in Clause 26.3.1 and (ii) the delay has not occurred as a result of failure to fulfil the obligations 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 0.2% (zero point two per cent) of the Performance Security for each day’s delay until the fulfilment of such aforementioned payment obligations specified in Clause 26.3.1, subject to a maximum of 20% (twenty percent) of the Performance Security.
ARTICLE 27

FEE

27.1 Collection and appropriation of Fee

27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the Fee Notification set forth in discussion with UPSRTC.\(^\text{10}\)

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

27.2 Revision of Fee

27.2.1 The Parties hereto acknowledge and agree that subject to and in accordance with the Fee Notification, the Fee specified therein as applicable on COD (the “Base Fee”) shall be revised annually on April 1 in accordance with the provisions of the Fee Notification; provided, however, that such revision shall not be effected until a period of 6 (six) months has elapsed from the date of the immediately preceding determination of Fee hereunder. For the avoidance of doubt, it is agreed that revision on account of variation in WPI shall be restricted to \([60\% \text{ (sixty per cent)}]\) of the variation in WPI occurring between January 31 immediately preceding the date of this Agreement and January 31 of the year of revision hereunder.

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

for using the Project Facilities at the Bus Terminal.
ARTICLE 28
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ARTICLE 29
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ARTICLE 30
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ARTICLE 31

ESCROW ACCOUNT

31.1 Escrow Account

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

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

31.2 Deposits into Escrow Account

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

(a) all funds constituting the Financial Package;

(b) all Fee and any other revenues from or in respect of the Bus Terminal and the Commercial Complex, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and

(c) all payments by the Authority, after deduction of any outstanding Annual Concession Fee:

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

31.3 Withdrawals during Concession Period

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

(a) all taxes due and payable by the Concessionaire for and in respect of the Bus Terminal;

(b) all payments relating to construction of the Bus Terminal, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authority as due and payable to it;

(e) Concession Fee or Annual Concession Fee, as the case may be, due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan;

(h) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

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

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

31.4 Withdrawals upon Termination

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

(a) all taxes due and payable by the Concessionaire for and in respect of the Bus Terminal;

(b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

(c) outstanding Annual Concession Fee;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including {Premium and} repayment of Revenue Shortfall Loan;

(e) retention and payments relating to the liability for defects and deficiencies set forth in Article 39;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;
(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under this Agreement; and

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

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

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 31.4.1 have been discharged.
ARTICLE 32
INSURANCE

32.1 Insurance during Concession Period

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

32.2 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 32. 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.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty-five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

32.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the 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.

32.5 **Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the
Concessionaire pursuant to this Article 32 shall include a waiver of any and
all rights of subrogation or recovery of the insurers thereunder against, inter
alia, the 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.

32.6 **Concessionaire’s waiver**

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

32.7 **Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid
to the Concessionaire by credit to the Escrow Account and it shall,
notwithstanding anything to the contrary contained in Clause 31.3, apply
such proceeds for any necessary repair, reconstruction, reinstatement,
replacement, improvement, delivery or installation of the Bus Terminal, and
the balance remaining, if any, shall be applied in accordance with the
provisions contained in this behalf in the Financing Agreements.
ARTICLE 33
ACCOUNTS AND AUDIT

33.1 Audited accounts

33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including all Fee and other revenues derived/collected by it from or on account of the Bus Terminal and Commercial Complex and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

33.1.2 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.

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) Fee charged and received, and other revenues derived from the Bus Terminal and/or the Commercial Complex, and (b) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 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-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered
Accountants.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at anytime, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 19.5.

33.4 Set-off

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

33.5 Dispute resolution

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

Force Majeure and Termination
ARTICLE 34

FORCE MAJEURE

34.1 Force Majeure

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

34.2 Non-Political Event

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

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Bus Terminal for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any delay or failure of an overseas contractor to deliver rolling stock or equipment in India if such delay or failure is caused outside India by any event specified in Sub-clause (a) above and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such contractor;

(e) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to
comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(f) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or

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

34.3 Indirect Political Event

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

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any Indirect Political Event that causes a Non-Political Event; or

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

34.4 Political Event

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

(a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 41 and its effect, in financial terms, exceeds the sum specified in Clause 41.1;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
(c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire’s or any Contractor’s inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;

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

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

34.5 Duty to report Force Majeure Event

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

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party’s performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party’s claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event 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.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably
request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

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

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

before COD and/or after the COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

34.7 Allocation of costs arising out of Force Majeure

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

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

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

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

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

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

34.8 Termination Notice for Force Majeure Event

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

34.9 Termination Payment for Force Majeure Event

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

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

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

(b) 110% (one hundred and ten per cent) of the Adjusted Equity; and

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

34.9.3 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 37.3.2 as if it were a Authority Default.

34.10 Dispute resolution

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

34.11 **Excuse from performance of obligations**

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

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.
ARTICLE 35

COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

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

35.2 Compensation for default by the Authority

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

35.3 Extension of Concession Period

Subject to the provisions of Clause 35.6, in the event that a material default or breach of this Agreement set forth in Clause 35.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation under Clause 35.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of Fee remained suspended on account thereof, as the case may be.

35.4 [Left Blank]35.5 Compensation to be in addition

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

35.6 Mitigation of costs and damage

The Affected Party shall make all reasonable efforts to mitigate or limit the
costs and damage arising out of or as a result of breach of Agreement by the other Party.
ARTICLE 36

SUSPENSION OF CONCESSIONAIRE’S RIGHTS

36.1 Suspension upon Concessionaire Default

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

36.2 Authority to act on behalf of Concessionaire

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

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

36.3 Revocation of Suspension

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

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

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders’ Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders’ Representative, the 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 36.1, for enabling the Lenders’ Representative to exercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the 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 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Authority upon occurrence of a Concessionaire Default.
ARTICLE 37

TERMINATION

37.1 Termination for Concessionaire Default

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

(a) the Performance Security or the Performance Guarantee, as the case may be, has been encashed and appropriated in accordance with Clause 9.2 and Clause 9.5 respectively and the Concessionaire fails to replenish or provide fresh Performance Security or the Performance Guarantee, as the case may be, within a Cure Period of 30 (thirty) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security or the Performance Guarantee, as the case may be, in accordance with Clause 9.2 and Clause 9.5 respectively, 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 or the Performance Guarantee, as the case may be, 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 Bus Terminal without the prior written consent of the Authority;

(e) Project Completion Date does not occur within the period specified in Clause 12.4.3;

(f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;

(g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be, or commits repeated default in conforming to the Key Performance Indicators;

(h) the Concessionaire has failed to make any payment to the 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
of competent jurisdiction and a provisional liquidator or receiver is
appointed and such order has not been set aside within 90 (ninety)
days of the date thereof or the Concessionaire is ordered to be wound
up by Court except for the purpose of amalgamation or
reconstruction; provided that, as part of such amalgamation or
reconstruction, the entire property, assets and undertaking of the
Concessionaire are transferred to the amalgamated or reconstructed
entity and that the amalgamated or reconstructed entity has
unconditionally assumed the obligations of the Concessionaire under
this Agreement and the Project Agreements; and provided that:
(i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect;

(t) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;

(u) the Concessionaire submits to the 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; (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; or

(x) the Concessionaire fails to pay the Upfront Premium and Annual Concession Fee in accordance with Article 26.

37.1.2 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 37.1.3.

37.1.3 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 37.1.2 to inform the Lenders’ Representative and grant 15 (fifteen) days to the Lenders’ Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the 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.

37.2 Termination for Authority Default

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

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;

(b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or

(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.

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

37.3 Termination Payment

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

(a) 90% (ninety per cent) of the Debt Due less Insurance Cover; and

(b) 70% (seventy per cent) of the amount representing the Additional Termination Payment:

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

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

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

(a) Debt Due;

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity; and

(c) 115% (one hundred and fifteen per cent) of the amount representing the Additional Termination Payment.

37.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the 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.

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

37.3.5 Notwithstanding anything to the contrary in this Agreement, but subject to the provisions of Clause 37.3.4, in the event any Project Assets, essential for the efficient, economic and safe operation of the Bus Terminal, shall have been acquired and installed after the 20th (twentieth) anniversary of COD, with prior written consent of the Authority (which consent shall not be
unreasonably denied, a sum equal to 80% (eighty per cent) of the Adjusted Depreciated Value thereof shall be deemed to be Debt Due for the purposes of Termination Payment.

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

37.4 Certain limitations on Termination Payment

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

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

(a) Adjusted Depreciated Value thereof;

(b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30 (thirty) days of his appointment hereunder; and

(c) [40% (forty per cent)] of the sum of Total Project Cost.

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

(a) Adjusted Depreciated Value thereof;

(b) the replacement value thereof, as assessed by an Approved Valuer, who shall be selected and appointed by the Authority, within 15 (fifteen) days of Termination, for submitting his assessment within 30
(thirty) days of his appointment hereunder; and

(c) [20% (twenty per cent)] of the sum of Total Project Cost.

37.4.4 [Additional Termination Payment due and payable forming part of Specified Assets shall be limited to the Adjusted Depreciated Value thereof;]

the capital cost of System Augmentation as approved by Senior Lenders.

37.5 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 Bus Terminal forthwith;

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

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

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and

(e) succeed upon election by the 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. 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.

37.6 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 37.3.6, any Termination pursuant to the
provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.
ARTICLE 38

DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

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

(a) notify to the Authority forthwith the location and particulars of all Project Assets;

(b) deliver forthwith the actual or constructive possession of the Bus Terminal, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;

(c) cure all Project Assets of all defects and deficiencies so that the Bus Terminal is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on ‘as is where is’ basis after bringing them to a safe condition;

(d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Bus Terminal and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete ‘as built’ Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Bus Terminal and shall be assigned to the Authority free of any encumbrance;

(e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Bus Terminal, including manufacturers’ warranties in respect of any plant or equipment and the right to receive outstanding insurance claims, to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and

(g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Bus Terminal, free from all Encumbrances, absolutely unto the Authority or to its nominee.

38.1.2 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 giving of any Termination Notice, until the Termination
of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15
(fifteen) days prior to the effective date of such Termination, the Independent
Engineer shall verify, after giving due notice to the Concessionaire
specifying the time, date and venue of such verification and/or inspection,
compliance by the Concessionaire with the Maintenance Requirements, and
if required, cause appropriate tests to be carried out at the Concessionaire’s
cost for this purpose. Defaults, if any, in the Maintenance Requirements shall
be cured by the Concessionaire at its cost and the provisions of Article 39
shall apply, mutatis mutandis, in relation to curing of defects or deficiencies
under this Article 38.

38.3 Cooperation and assistance on transfer of Project

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

38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer
Date in the event of Termination by efflux of time and immediately in the
event of either Party conveying to the other Party its intent to issue a
Termination Notice, as the case may be, as much information and advice as
is reasonably practicable regarding the proposed arrangements for operation
of the Project following the Transfer Date. The Concessionaire shall further
provide such reasonable advice and assistance as the Authority, its
concessionaire or agent may reasonably require for operation of the Project
until the expiry of 6 (six) months after the Transfer Date.

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

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Bus Terminal 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-U
(the “Vesting Certificate”), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Bus Terminal, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Bus Terminal on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Divestment costs etc.

38.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Bus Terminal 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.

38.5.2 In the event of any dispute relating to matters covered by and under this Article 38, the Dispute Resolution Procedure shall apply.
ARTICLE 39

DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Bus Terminal for a period of 120 (one hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Bus Terminal during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire’s risk and cost so as to make the Bus Terminal 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.
Part VI

Other Provisions
ARTICLE 40

ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

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

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

40.2 Permitted assignment and charges

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

(a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Bus Terminal;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Bus Terminal, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Bus Terminal;

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders’ Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

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

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

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days’ notice to the Concessionaire, assign and/or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority’s then outstanding obligations under this Agreement.
ARTICLE 41
CHANGE IN LAW

41.1 Increase in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Authority shall pay the amount specified therein; provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

41.2 Reduction in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the

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11 This amount may, in the discretion of the Authority, be suitably increased, but in no case exceeding a ratio of Rs. 1 cr. for every Rs. 500 cr. of Total Project Cost.
aforesaid notice, the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire’s costs of performing its obligations under this Agreement.

41.3 Protection of NPV

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

41.4 Restriction on cash compensation

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

41.5 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same are recoverable from the Users.
ARTICLE 42
LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 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.

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

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify, hold harmless and defend the 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.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire’s Contractors in performing the Concessionaire’s obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Bus Terminal, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

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

42.4 Defence of claims

42.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in
writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

42.4.2 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

42.4.3 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

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

42.5 **No consequential claims**

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

42.6 **Survival on Termination**

The provisions of this Article 42 shall survive Termination.
ARTICLE 43

RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

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

43.2 Access rights of the Authority and others

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

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

43.3 Property taxes

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

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Bus Terminal.
ARTICLE 44

DISPUTE RESOLUTION

44.1 Dispute resolution

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

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

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Chairman of the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 44.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 44.3.

44.3 Arbitration

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

44.3.2 There shall be a Board of three arbitrators, of whom each Party shall select one, and the third arbitrator shall be appointed by the two arbitrators so
selected, and in the event of disagreement between the two arbitrators, the appointment shall be made in accordance with the Rules.

44.3.3 The arbitrators shall make a reasoned award (the “Award”). Any Award made in any arbitration held pursuant to this Article 44 shall be final and binding on the Parties as from the date it is made, and the Concessionaire and the Authority agree and undertake to carry out such Award without delay.

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

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

44.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory Regulatory Authority or Commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such Regulatory Authority or Commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.
ARTICLE 45
DISCLOSURE

45.1 Disclosure of Specified Documents

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

45.2 Disclosure of Documents relating to safety

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

45.3 Notwithstanding the provisions of Clauses 45.1 and 45.2, the Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) 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 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.
ARTICLE 46

REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

46.1.1 The Concessionaire shall maintain a public relations office at each of the Bus Terminal where it shall keep a register (the “Complaint Register”) open to public access at all times for recording of complaints by any person (the “Complainant”). Information relating to the availability of and access to the Complaint Register shall be prominently displayed by the Concessionaire at Bus Terminal so as to bring it to the attention of all Users.

46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Concessionaire to the Complainant under a certificate of posting.

46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise the Concessionaire to take such further action as the Authority may deem appropriate for a fair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.
ARTICLE 47

MISCELLANEOUS

47.1 **Governing law and jurisdiction**

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

47.2 **Waiver of immunity**

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

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

47.3 [deleted]

47.4 **Depreciation and Interest**

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

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

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

47.6 Waiver

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

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

47.7 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Bus Terminal 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.
47.8 Exclusion of implied warranties etc.

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

47.9 Survival

47.9.1 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.

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

47.10 Entire Agreement

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

47.11 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.
47.12 No partnership

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

47.13 Third Parties

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

47.14 Successors and Assigns

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

47.15 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 Lucknow 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 Lucknow it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and

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

47.16 Language

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

47.17 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.
ARTICLE 48

DEFINITIONS

48.1 Definitions

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

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

“Additional Facilities” means the facilities which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

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

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the “Base Adjusted Equity”) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent)\(^\text{12}\) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

\(^{12}\) 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 20 year Concession Period shall be $\frac{100}{240} = 0.416$ rounded off to two decimal points i.e. 0.42.
Period is extended, but the revision on account of WPI shall continue to be made;

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

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

“Annual Concession Fee” shall have the meaning set forth in Clause 26.3

“Appendix” shall have the meaning set forth in Clause 10.3.1;
“Applicable Laws” means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

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

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

“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);

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

“Authority’s Office” means the office of the Authority which shall be compulsorily build as a part of the Bus Terminal

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

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

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

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

“Bid Security” means the security provided by the Concessionaire to the Authority along with the Bid in a sum of Rs. **** crore (Rupees **** crore)\(^{13}\), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

“Bus Terminal” means the Bus Depot, Workshops, Authority’s Office, Commercial Facilities and all other Project Assets including allied infrastructure facilities like parking, bus bays, water supply distribution, sewerage distribution, parking etc necessary for and associated with operation of trains on the Site, and shall not include the Commercial Complex;

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

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

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

\(^{13}\text{Calculated @1\% (one per cent) of the amount specified in the definition of Total Project Cost. The Authority may, if deemed necessary, prescribe a higher Bid Security not exceeding 2\% of the Total Project Cost. In the case of a project having a Total Project Cost of Rs. 2,000 cr. or above, the Authority may reduce the Bid Security, but not less than 0.5\% of the Total Project Cost in any case.}\)
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 (i) 51% (fifty one per cent) thereof for not less than 5 (years) following the COD and , (ii) 26% (twenty six per cent) thereof, or such lower proportion (10%) as may be permitted by the Authority during the remaining Concession Period; 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 COD, shall constitute Change in Ownership;

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

“Commercial Facilities” means the building and commercial facilities permissible under the prevailing bye laws envisaged for the project the case may be which are developed and forming the part of the Bus Terminal cum Commercial Complex Project; “Company” means the company acting as the Concessionaire under this Agreement;

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

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

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

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

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

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

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

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

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

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

“Construction Works” means all works and things necessary to complete the Bus Terminal in accordance with this Agreement;
“Contractor” means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other agreement or a material contract for construction, operation and/or maintenance of the Bus Terminal or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

(a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way 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 Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

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

“Damages” shall have the meaning 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 under the Financing Agreements;

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

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

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

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

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

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

“Effective Date” means the date of execution of this Agreement;

“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 Bus Terminal 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 Bus Terminal, including Users and passengers and public thereof, or which poses an immediate threat of material damage to any of the Project Assets;

“Encumbrances” means, in relation to the Bus Terminal, 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 Bus Terminal, 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 shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

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

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

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

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

“Fee” means the charge levied on and payable by the Users;

“Fee Notification” means the Notification to be issued by the Government, prior to the Appointed Date, in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Schedule-R;

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

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

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

“Financial Package” means the financing package indicating the total capital cost of Bus Terminal 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 if any;

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

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

“GOI” 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;

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

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

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

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

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

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

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

“LOI” or “Letter of Intent” means the letter of award referred to in Recital (E);

“Lead Member” shall have the meaning set forth in Recital (C);

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

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

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

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

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

[“Medical Aid Post” shall have the meaning set forth in Clause 21.1;]

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

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

“O&M” means the operation and maintenance of the Bus Terminal and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee 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, Tolling Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

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

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

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

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

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

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

“Performance Guarantee” shall have the meaning set forth in Clause 9.4;

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

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

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

“Project Assets” means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, drainage works, sign boards, kilometre-stones, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in
respect of the Bus Terminal, but does not include Additional Facilities;

“The 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;

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

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

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

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

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

“The 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;

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

“The 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 Lucknow 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;

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

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

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

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

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

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

“The Safety Fund” shall have the meaning set forth in Clause 18.2;
“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 parri passu charge on the assets, rights, title and interests of the Concessionaire;

“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 Bus Terminal, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Bus Terminal submitted by the Concessionaire to, and expressly approved by, the Authority;

“State” means the State of ***** 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, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

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

(a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and

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

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;
“Subsistence Revenue” means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under clause 34.7.2 or 35.2;

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

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

“Taxes” means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Bus Terminal 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” means the tests set forth in Schedule-I to determine the completion of Bus Terminal in accordance with the provisions of this Agreement;

“Ticket Counters” means [****]
“Total Project Cost” means the lowest of:

(a) the capital cost of the Project, as set forth in the Financial Package;

(b) the actual capital cost of the Project upon completion of the Bus Terminal; and

(c) a sum of Rs. ***** crore (Rupees ***** crore),

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;

{“Upfront Premium” shall have the meaning set forth in Clause 25.1;}
SIGNED, SEALED AND DELIVERED

For and on behalf of THE AUTHORITY by:

(Signature) (Name) (Designation)

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 $.

In the presence of:

1. 
2. 

$ To be affixed in accordance with the articles of association of the Concessionaire.
Schedules

(See Clause 10.1)
SITE OF THE PROJECT

1 The Site

1.1 Site of the Bus Terminal and Commercial Complex shall include the land, buildings, structures and road works as described in Annex-I of this Schedule A.

1.2 An inventory of the Site including the land, buildings, structures, road works, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the Authority Representative and the Concessionaire, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

1.3 Additional land required for [car depots, piers, electric sub-stations, ancillary buildings or for] construction of works specified in Change of Scope Order shall be acquired in accordance with the provisions of this Agreement. Upon acquisition, such land shall form part of the Site and vest in the Authority.
Annex - I
(Schedule-A)

Site for the Bus Terminal and Commercial Complex

[Existing Site Plan]
SCHEDULE – B
(See Clause 2.1)

DEVELOPMENT OF THE BUS TERMINAL

1 Development of the Bus Terminal

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

2 Bus Terminal

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

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

3. Commercial Complex

3.1 Commercial Complex shall be undertaken in accordance with and subject to the terms and conditions specified in Annex-III of this Schedule-B.

3.2 Commercial Complex shall be undertaken and completed by the Concessionaire in conformity with the Specifications and Standards set forth in Schedule-D.
Description of Bus Terminal

1. Name & Address of the Bus Terminal

   Alambagh Bus Terminal, Lucknow.

2. Project Facilities

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

3. Specifications and Standards

   The Bus Terminal shall be constructed in conformity with the Specifications and Standards specified in Annex-I of Schedule-D.
Annex - II
(Schedule-B)
(See Clause 3.1.3)

Description of Commercial Complex

[Note 1: The Commercial Complex shall be constructed as per the model governing Bye Laws and Zoning Regulations formulated by the Housing and Development Department, GoUP for the Project of Development of Bus Terminals on PPP Mode]
SCHEDULE – C
(See Clause 2.1)

PROJECT FACILITIES

1  Project Facilities

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

2  Project Facilities for Bus Terminal

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

*(Schedule-C)*

**Project Facilities for Bus Terminal**

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<thead>
<tr>
<th>Sr. No</th>
<th>Particular</th>
<th>Alambagh Lucknow Bus Station in Sqm</th>
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<tbody>
<tr>
<td>1</td>
<td>Area of Project Land</td>
<td>24280</td>
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<tr>
<td>2</td>
<td>Admissible Ground Coverage</td>
<td>30% / 728430%</td>
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<td>3</td>
<td>Area of Ground Coverage</td>
<td>7284</td>
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<td>4</td>
<td>Admissible FAR</td>
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<td>5</td>
<td><strong>Total Admissible Development</strong></td>
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<tr>
<td></td>
<td>(in sqm.)</td>
<td></td>
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<td></td>
<td>A) Development Area for Bus Station @ 55%</td>
<td>33385</td>
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<tr>
<td></td>
<td>B) Development Area for Commercial @ 45%</td>
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<td>6</td>
<td><strong>Number of Peak Hour Departure</strong></td>
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<tr>
<td></td>
<td>A) Current Peak Hour Departures</td>
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</tr>
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<td></td>
<td>B) Expected Peak Hour Departure up to 2042</td>
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<td></td>
<td>@ 7% straight line method</td>
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<td>7</td>
<td>A) Current Estimated Departures</td>
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<td>B) Expected Departure up to 2042 @ 7% straight line method</td>
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<td>Number of Departure Platform (6B/4)</td>
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<td>9</td>
<td>Number of Bus Parking</td>
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<td>Passenger Waiting shed</td>
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<td>11</td>
<td>Waiting Hall A/C</td>
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<td>Canteen food court</td>
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<td>13</td>
<td>Cloak room</td>
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<td>15</td>
<td>Parcel room</td>
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<td>Booking counter &amp; reservation</td>
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<tr>
<td>17</td>
<td>Stall (area in sqmt.)</td>
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<td>18</td>
<td>Urinals (Nos. and area in Sqmt.)</td>
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<td>Deluxe urinals (Nos. and area in Sqmt.)</td>
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<tr>
<td>20</td>
<td>W/C Toilet (Nos. and area in Sqmt.)</td>
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<td>Deluxe Toilet (Nos. and area in Sqmt.)</td>
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<td>Emergency medical &amp; pharmacy</td>
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<td>23</td>
<td>Crew restroom /dormitory (136 Number)</td>
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<td>Post office and business centre</td>
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<td>25</td>
<td>Bank ATM</td>
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<td>26</td>
<td>Miscellaneous</td>
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<td>27</td>
<td>Bus Station Office setup in (in sqmt.)</td>
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<td>28</td>
<td>Administrative area</td>
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<td><strong>Total Bus Station Area</strong></td>
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<th>Alambagh Lucknow Bus Station</th>
<th>Area / Unit</th>
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<tr>
<td>1</td>
<td>Width of the entry point</td>
<td>15.00 Mtr.</td>
<td>Sq.Mt</td>
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<tr>
<td>2</td>
<td>Width of exit point.</td>
<td>15.00 Mtr.</td>
<td>Sq.Mt</td>
</tr>
<tr>
<td>3</td>
<td>Height Restriction</td>
<td>NA</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Setbacks</td>
<td>Front – 12 meters</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td>Back – 6 meters</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Sides – 6 meters</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE – D

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

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

2. Commercial Complex shall be undertaken in accordance with Applicable Laws, Good Industry Practice and the provisions of building construction codes widely followed in India, UK or USA, as the case may be.

   [Note 1: The Authority shall prepare a “Manual of Specifications and Standards for the *** Bus Terminal”. Only the basic/fundamental requirements of design and construction shall be laid down in the Manual, and greater emphasis shall be placed on prescribing the output specifications that have a direct bearing on the level and quality of service for Users. The Manual shall be published and applied to the Bus Terminal by reference hereunder. This would remove the element of uncertainty in project design and help in laying down cost-effective specifications and standards across the country.]

Annex - I
(Schedule-D)

Specifications and Standards for the Bus Terminal

1. Manual of Specifications and Standards to apply
   Subject to the provisions of Paragraph 2 of this Annex-I, the Bus Terminal shall conform to the Manual of Specifications and Standards for the Bus Terminal published by [the Authority] (An authenticated copy of the Manual shall be provided to the Concessionaire.)

Material Specifications for Building Works

<table>
<thead>
<tr>
<th>Item No</th>
<th>Description</th>
<th>Specifications</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Foundation</td>
<td>As per structural design based on soil investigation reports</td>
</tr>
<tr>
<td>2.</td>
<td>Super Structure</td>
<td></td>
</tr>
<tr>
<td>2.1</td>
<td>Structure</td>
<td>RCC framed construction with filler walls with fly ash bricks/ brick work or load bearing construction in fly ash brick/ brick/ stone masonry with intermediate</td>
</tr>
<tr>
<td>Item No</td>
<td>Description</td>
<td>Specifications</td>
</tr>
<tr>
<td>--------</td>
<td>------------------------------</td>
<td>-------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2.2</td>
<td>Internal Partitions</td>
<td>Light weight auto claved aerated concrete blocks</td>
</tr>
<tr>
<td>2.2.1</td>
<td>Light weight auto claved</td>
<td>aerated concrete blocks</td>
</tr>
<tr>
<td>2.2.2</td>
<td>Gypsum Blocks</td>
<td></td>
</tr>
<tr>
<td>2.2.3</td>
<td>Non asbestos double skin</td>
<td>cement boards</td>
</tr>
<tr>
<td>2.2.4</td>
<td>Fly ash bricks</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Doors and Windows</td>
<td></td>
</tr>
<tr>
<td>3.1</td>
<td>Frames</td>
<td>Door frames of 2(^{nd}) class Indian teak wood or equivalent in Officers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>rooms. Anodized/ powder coated/ polyester powder coated aluminum windows/</td>
</tr>
<tr>
<td></td>
<td></td>
<td>doors. Glazing with reflective glass or double glass using float glass</td>
</tr>
<tr>
<td>3.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.2.1</td>
<td>Door Shutters</td>
<td>Paneled type in 2(^{nd}) class teak wood or flush door with teak venerated</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ply/ commercial ply as per CPWD specifications/ as per design</td>
</tr>
<tr>
<td>3.2.2</td>
<td></td>
<td>Anodized/ powder coated/ polyester coated Aluminum shutters with float glass</td>
</tr>
<tr>
<td></td>
<td></td>
<td>paneling wherever required.</td>
</tr>
<tr>
<td>3.2.3</td>
<td>PVC/ FRP door frames and</td>
<td>Shutters in wet areas</td>
</tr>
<tr>
<td></td>
<td>shutters in wet areas</td>
<td></td>
</tr>
<tr>
<td>3.3</td>
<td>Window Shutters</td>
<td>Factory made Anodized/ powder coated/ polyester coated “Z” section aluminum</td>
</tr>
<tr>
<td></td>
<td></td>
<td>frames and shutters for windows</td>
</tr>
<tr>
<td>3.4</td>
<td>Fittings</td>
<td>Anodized aluminium/ stainless steel or equivalent</td>
</tr>
<tr>
<td>3.5</td>
<td>Fire Check Door</td>
<td>As per fire safety specifications</td>
</tr>
<tr>
<td>4.</td>
<td>Flooring</td>
<td></td>
</tr>
<tr>
<td>4.1</td>
<td>Main Entrance Hall</td>
<td>Pre polished granite flooring</td>
</tr>
<tr>
<td>4.2</td>
<td>Corridors</td>
<td>Matt finished vitrified tiles/ granite flooring</td>
</tr>
<tr>
<td>4.3</td>
<td>Rooms</td>
<td>Granite tiles/ vitrified tiles/ ceramic tile flooring</td>
</tr>
<tr>
<td>4.4</td>
<td>Lavatory blocks</td>
<td>Granite flooring</td>
</tr>
<tr>
<td>4.5</td>
<td>Flooring in basement</td>
<td>Vacuum dewatered concrete</td>
</tr>
<tr>
<td>4.6</td>
<td>Rest of the Area</td>
<td>Kota stone flooring</td>
</tr>
<tr>
<td>5.</td>
<td>Staircase</td>
<td></td>
</tr>
<tr>
<td>5.1</td>
<td>Internal staircase</td>
<td>Single piece granite or marble flooring in treads and risers with dado of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>matching permanent finish specifications</td>
</tr>
<tr>
<td>5.2</td>
<td>Fire escape staircase</td>
<td>Single piece of Kota stone flooring in treads and risers with dado of</td>
</tr>
<tr>
<td></td>
<td></td>
<td>matching permanent finish specifications</td>
</tr>
<tr>
<td>6.</td>
<td>Railing</td>
<td>Stainless steel railings</td>
</tr>
<tr>
<td>7.</td>
<td>Toilets</td>
<td>Granite flooring. Glazed tiles of size not less than 300 X 450 mm in dado.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Granite counters. Stainless steel sinks. Mirrors with moulded PVC frame. FRP/</td>
</tr>
<tr>
<td></td>
<td></td>
<td>PVC</td>
</tr>
<tr>
<td>Item No</td>
<td>Description</td>
<td>Specifications</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
<td>----------------</td>
</tr>
<tr>
<td>8.</td>
<td>Roofing</td>
<td>doors with frames</td>
</tr>
<tr>
<td>8.1</td>
<td>Roof treatment</td>
<td>Coba treatment</td>
</tr>
<tr>
<td>8.2</td>
<td>False ceiling</td>
<td>False ceiling in office area and toilets to cover the services as per design requirements</td>
</tr>
<tr>
<td>9.</td>
<td>Finishing</td>
<td></td>
</tr>
<tr>
<td>9.1</td>
<td>External</td>
<td>Dry stone cladding, washed grit plaster, water proof weather coat paints, structural glazing, ACP cladding confirming to energy conservation building code</td>
</tr>
<tr>
<td>9.2</td>
<td>Internal</td>
<td></td>
</tr>
<tr>
<td>9.2.1</td>
<td>Gypsum plaster in dry areas</td>
<td></td>
</tr>
<tr>
<td>9.2.2</td>
<td>Cement plaster in wet areas</td>
<td></td>
</tr>
<tr>
<td>9.2.3</td>
<td>Dry distemper in service area and basement</td>
<td></td>
</tr>
<tr>
<td>9.2.4</td>
<td>Oil bound distemper/ acrylic emulsion paint/ texture paint</td>
<td></td>
</tr>
<tr>
<td>9.3</td>
<td>Painting</td>
<td>Doors and windows – painting / polishing on wood work as per design requirements</td>
</tr>
<tr>
<td>10.</td>
<td>Provision for barrier free building</td>
<td>Ramps, toilets for physically challenged, chequered tiles, use of Braille signages and lifts etc, glass reinforced tiles in ramp areas</td>
</tr>
<tr>
<td>11.</td>
<td>Landscaping</td>
<td>10% of the building cost will be kept in preliminary estimate for murals and landscape related construction i/c pavement/ paving</td>
</tr>
<tr>
<td>12.</td>
<td>Lifts/ Elevators</td>
<td>Min15 passenger capacity, fully Automatic lifts with full back up capacity</td>
</tr>
<tr>
<td>13.</td>
<td>Lighting systems</td>
<td></td>
</tr>
</tbody>
</table>

2  **[Deviations from the Manual]**

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

[**Note 2:** See Note 1 below Schedule-D.]
SCHEDULE –E
(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

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

The Managing Director,
Uttar Pradesh State Transport Corporation

WHEREAS:

(A) .......................(the “Concessionaire”) and the Managing Director, Uttar Pradesh State Transport Corporation, (the “Authority”) have entered into a Concession Agreement dated ...................(the “Agreement”) whereby the Authority is entrusted with providing bus transport services to the citizens of the state, development, maintenance and management of its bus terminals/depots 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***** cr. (Rupees ***** crore) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Construction Period (as defined in the Agreement).

(C) We, ....................... through our Branch at .......................(the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Security.

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

1. The Bank hereby unconditionally and irrevocably guarantees 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 upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of Deputy Secretary to the Authority, 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 until the earlier of the 1st (first) anniversary of the Appointed Date or compliance of the conditions specified in paragraph 8 below and unless a demand or claim in writing is made by the Authority on the Bank under this Guarantee, no later than 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the
Concessionaire shall have expended on Project construction an aggregate
sum not less than 20% (twenty per cent) of the Total Project Cost which is
deemed to be [Rs.*** cr.] for the purposes of this Guarantee, and provided
the Concessionaire is not in breach of this Agreement. Upon request made by
the Concessionaire for release of the Performance Security along with the
particulars required hereunder, duly certified by a statutory auditor of the
Concessionaire, the 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 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 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 issue
PERFORMANCE GUARANTEE

[The Managing Director,
Uttar Pradesh State Transport Corporation

WHEREAS:

(A) …………………..(the “Concessionaire”) and the Managing Director, Uttar Pradesh State Transport Corporation (the “Authority”) have entered into a Concession Agreement dated ……………(the “Agreement”) whereby the Authority is entrusted with the development, maintenance and management of bus terminals/depots cum commercial complex at**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 Guarantee to the Authority in a sum of Rs***** cr. (Rupees ***** crore) (the “Guarantee Amount”) as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the entire Concession Period (as defined in the Agreement) and for a period of 120 (one hundred and twenty) days after expiry of the Concession Period or Termination (as defined in the Agreement), whichever is earlier (the “Guarantee Period”).

(C) We, ……………………… through our Branch at ………………….(the “Bank”) have agreed to furnish this Bank Guarantee by way of Performance Guarantee.

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

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Concessionaire’s obligations during the Guarantee 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 upto an aggregate sum of the Guarantee Amount as the Authority shall claim, without the Authority being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.

2. A letter from the Authority, under the hand of an Officer not below the rank of Deputy Secretary to the Authority 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 Guarantee 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 until the compliance of the conditions 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 6 (six) months from the date of expiry of this Guarantee, all rights of the Authority under this Guarantee shall be forfeited and the Bank shall be
relieved from its liabilities hereunder.

8. The Performance Guarantee shall cease to be in force and effect upon the expiry of the Guarantee Period. Upon request made by the Concessionaire for release of the Performance Guarantee along with the particulars required to satisfy the expiry of Guarantee Period, the Authority shall release the Performance Guarantee 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 during the Guarantee Period pursuant to the provisions of the Agreement

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

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

(Signature)
(Name)
(Designation)
(Code Number)
(Address)

NOTES:

(1) The bank guarantee should contain the name, designation and code number of the officer(s) signing the guarantee.

(2) The address, telephone number and other details of the Head Office of the Bank as well as of issuing Branch should be mentioned on the covering letter of issuing Branch.
SCHEDULE –G

(See Clause 12.1)

PROJECT COMPLETION SCHEDULE

1 Project Completion Schedule

During Construction Period, the Concessionaire shall comply with the requirements set forth in this Schedule-G for each of the Project Milestones and the Scheduled Completion Date (the “Project Completion Schedule”). Within 15 (fifteen) days of the date of each Project Milestone, the Concessionaire shall notify the Authority of such compliance along with necessary particulars thereof. For the avoidance of doubt, it is agreed that the provisions of this Schedule shall not apply to Commercial Complex.

2 Project Milestone-I

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

2.2 Prior to the occurrence of Project Milestone-I, the Concessionaire shall have commenced construction of the Bus Terminal and expended not less than 5% (five per cent) of the Total Project Cost set forth in the Financial Package.

3 Project Milestone-II

3.1 Project Milestone-II shall occur on the date falling on the [***] day from the Appointed Date (the “Project Milestone-II”).

3.2 Prior to the occurrence of Project Milestone-II, the Concessionaire shall have commenced [construction of ****, and expended not less than 15% (fifteen per cent)] of the Total Project Cost set forth in the Financial Package.

4 Project Milestone-III

4.1 Project Milestone-III shall occur on the date falling on the [***] day from the Appointed Date (the “Project Milestone-III”).

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

5 Project Milestone-IV

5.1 Project Milestone-IV shall occur on the date falling on the [***] day from the Appointed Date (the “Project Milestone-IV”).

5.2 [Prior to the occurrence of Project Milestone-IV, the Concessionaire shall have constructed on the Bus Terminal and expended not less than 50% (fifty
per cent) of the Total Project Cost set forth in the Financial Package.

6. **Project Milestone-V**

6.1 Project Milestone-V shall occur on the date falling on the [***] day from the Appointed Date (the “Project Milestone-V”).

6.2 [Prior to the occurrence of Project Milestone-V, the Concessionaire shall have expended not less than 75% (seventy five per cent) of the Total Project Cost, set forth in the Financial Package.]

7. **Scheduled Completion Date**

7.1 The Scheduled Completion Date shall occur on the [***] day from the Appointed Date.

7.2 On or before the Scheduled Completion Date, the Concessionaire shall have completed the Bus Terminal in accordance with this Agreement.

8. **Extension of period**

Upon extension of any or all of the aforesaid Project Milestones or the Scheduled Completion Date, as the case may be, under and in accordance with the provisions of this Agreement, the Project Completion Schedule shall be deemed to have been amended accordingly.
SCHEDULE –H
(See Clause 12.3)

DRAWINGS

1 Drawings

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

2 Additional drawings

2.1 If the Independent Engineer determines that for discharging its duties and functions under this Agreement, it requires any drawings other than those listed in Annex-I, it may by notice require the Concessionaire to prepare and furnish such drawings forthwith. Upon receiving a requisition to this effect, the Concessionaire shall promptly prepare and furnish such drawings to the Independent Engineer, as if such drawings formed part of Annex-I of this Schedule-H.
Annex - I
(Schedule-H)

List of Drawings

[The list shall be in two parts, namely, Part-A specifying the Drawings for the Bus Terminal and Part-B specifying the Drawings Augmentation.]
SCHEDULE –I
(See Clause 14.1.2)

TESTS

1 Schedule for Tests

1.1 The Concessionaire shall, no later than 60 (sixty) days prior to the likely completion of Bus Terminal, notify the Independent Engineer and the Authority of its intent to subject the Bus Terminal to Tests, and no later than 7 (seven) days prior to the actual date of Tests, furnish to the Independent Engineer and the Authority detailed inventory and particulars of all works and equipment forming part of Bus Terminal.

1.2 The Concessionaire shall notify the Independent Engineer of its readiness to subject the Bus Terminal to Tests at any time after 7 (seven) days from the date of such notice, and upon receipt of such notice, the Independent Engineer shall, in consultation with the Concessionaire, determine the date and time for each Test and notify the same to the Authority who may designate its representative to witness the Tests. The Independent Engineer shall thereupon conduct the Tests itself or cause any of the Tests to be conducted in accordance with Article 14 and this Schedule-I.

2 Tests

2.1 Tests: Without prejudice to the provisions of this Clause 2, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out Tests, in accordance with Good Industry Practice, for determining the compliance of the Bus Terminal with Specifications and Standards. The Tests would be carried out on a random sample basis and the number or frequency, as the case may be, of such Tests shall, to the extent possible, not exceed 10% (ten per cent) of the tests that the owner or builder of such works would normally undertake in accordance with Good Industry Practice.

2.2 Visual and physical Test: The Independent Engineer shall conduct a visual and physical check of the Bus Terminal to determine that all works and equipment forming part thereof conform to the provisions of this Agreement.

2.3 Tests for equipment Independent Engineer shall conduct or cause to be conducted Tests, in accordance with Good Industry Practice, for determining the compliance of equipment, telecommunication and fare collection equipment with the Specification and Standards and Safety Requirements. Without prejudice to the generality of this Clause 2.4, such Tests shall include:

(i) provide details (ii) Any other Test as may be prescribed under Applicable Laws.
2.5 Trial run of Buses: The Independent Engineer shall conduct or cause to be conducted adequate trial runs of Buses to determine the compliance of the Bus Terminal, including equipment, with the Specification and Standards, Maintenance Requirements and Safety Requirements.

2.6 Environmental audit: The Independent Engineer shall carry out a check to determine conformity of the Bus Terminal with the environmental requirements set forth in Applicable Laws and Applicable Permits.

2.7 Safety review: Safety audit of the Bus Terminal shall have been undertaken by the Safety Consultant as set forth in Schedule-L, and on the basis of such audit, the Independent Engineer shall determine conformity of the Bus Terminal with the provisions of this Agreement.

3 Agency for conducting Tests

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

4. Tests for Safety Certification

Tests for determining the conformity of the Bus Terminal with the Safety Requirements shall be conducted in accordance with Good Industry Practice and in conformity with Applicable Laws.

5. Completion/Provisional Certificate

Upon successful completion of Tests, the Independent Engineer shall issue the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 14.
SCHEDULE –J
(See Clause 14.2 & 14.3)

COMPLETION CERTIFICATE

1. I, ………………. (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated ………….. (the “Agreement”), for the Bus Terminal at *** 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 Bus Terminal with the provisions of the Agreement, and I am satisfied that the Bus Terminal can be safely and reliably placed in commercial service of the Users thereof.

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

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

(Signature)
(Name)
(Designation)
(Address)
PROVISIONAL CERTIFICATE

1 I/We, …………………….. (Name of the Independent Engineer), acting as Independent Engineer, under and in accordance with the Concession Agreement dated …………… (the “Agreement”), for the Bus Terminal at *** 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 Bus Terminal with the provisions of the Agreement.

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

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

ACCEPTED, SIGNED, SEALED AND DELIVERED
For and on behalf of CONCESSIONAIRE by:
(Signature)
(Name and Designation)
(Address)

SIGNED, SEALED AND DELIVERED
For and on behalf of INDEPENDENT ENGINEER by:
(Signature)
(Name and Designation)
(Address)
SCHEDULE – K
(See Clause 17.2)

OPERATION AND MAINTENANCE REQUIREMENTS

SCOPE OF WORK AND PERFORMANCE STANDARDS IN CONSTRUCTION PHASE

1. Brief Scope of Work for Construction:
   - Taking over of the site on “as is where is” basis and planning, designing, engineering, constructing and developing the project so as to ensure development of a State-of-the-Art Bus Terminal-cum-Commercial Complex at Alambagh Bus Terminal in phases such that the operations of the existing Bus Terminus are not hampered in any way and arranging approval of Competent Authorities.
   - Site clearance and cordoning off the site; providing and deputing of Security
   - Construction of Bus Terminal buildings as per the approved plans
   - Construction of Cement Concrete Pavement for circulation, parking, boarding and disembarkation areas for buses as per specification
   - Construction of toll plazas and check barriers, installation of necessary equipment
   - Construction of parking, for both Bus Terminal and the Commercial Complex
   - Construction of Commercial Complex building as per approved plans and specifications
   - Providing and installation of all internal and external services in the Complex viz. internal sanitary and plumbing, internal electrical works; analogous addressable fire detection, fire alarm and fire fighting system(as per approved plans)
   - Procure, transport, receive unload and safe keep all the plants and machinery, equipment, materials and other things required for the construction of the Project Facilities.
   - Arrangement of all the material requirements for the project and disposal of all the material wastes and debris
• Providing and construction of all Estates Services for development of land namely water supply source and distribution; sewerage collection and disposal; storm water collection and disposal; campus electrification; land safety and horticulture works

• Reporting, accounting and any other works set out in the Concession Agreement

• The various elements of works delineated above shall be carried out as per specifications and Good Industry Practices to meet the performance standards

• Performance Standards in Construction Phase

• During construction phase performance standards to be met shall conform to provision of relevant BIS codes, UP PWD specifications and latest National Building Code (NBC) and are to be approved by the competent authority, as outlined in the Concession Agreement. Fly ash as per directives of the Central / State Government is to be used wherever applicable according to the applicable codes. Where any of the standards is silent, Good Industry Practice shall be followed in consultation with the concerned authority.

• The materials, equipments, appliance and machinery to be used and installed shall be tested by taking out samples and testing as per relevant standards including arranging of test certificates from the suppliers and manufactures.

• Wherever required, Load Tests shall be conducted on structural elements. Incase of piling work for foundation, vertical load tests and lateral load tests shall be conducted towards initial load and routine tests. All equipments, appliances and machinery shall be tested as per manufacturer’s recommendation in the presence of Independent Engineer and Engineer (or his representative) before commissioning thereof.

2. PERFORMANCE STANDARDS FOR OPERATIONS & MAINTENANCE

The O & M of Bus Terminal-cum-Commercial Complex at Alambagh, Lucknow Bus Terminal shall be carried out to maintain the performance standards, which shall comprise, but shall not be limited to that described below. The performance levels define the level at which the Project Facility is to be operated & maintained. Performance standards are defined for both the operation and maintenance. The obligation of the Concessionaire with respect to maintenance requirements shall include the rectification of the defects and deficiencies specified below within the time limit set forth against such deficiency or defect. Notwithstanding anything contrary to specified in this schedule, if the nature and
extent of any defect justifies more time for its repair or rectification as compared to
time specified herein, the Concessionaire shall be entitled to additional time in
conformity with good industry practice. However, the Concessionaire shall get prior
approval from the Concessioing Authority, for such additional requirement of time.
Notwithstanding anything to the contrary contained in this schedule, if any defect,
deficiency or deterioration in the Project Facility poses danger to the life and
property of the Users thereof, the Concessionaire shall promptly take all reasonable
measures in consultation with Concessioning Authority for elimination or
minimizing such danger.

3. Performance Standard for Operations

The operations management shall include the following operations:
   1. Regular Operations
   2. Emergency Operations

3.1 Regular Operations

Regular operations include the following:
   - Permitting smooth and uninterrupted flow of traffic during normal operating
     conditions
   - Functioning of the passenger amenities and the parking facilities
   - Functioning of the various building services and estate services
   - Traffic management within the Bus Terminal during routine and periodic
     maintenance

Concessionaire shall adhere to the following Performance Indicators:

<table>
<thead>
<tr>
<th>Component</th>
<th>Operation</th>
<th>Performance Indicator</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The bus traffic has to be managed very efficiently especially during the peak hours of the day along with the passenger traffic to ensure that the buses get the desired service time at the alighting and boarding bays. The arrival and departure of the buses shall be as per the bus timetable issued by the UPSRTC. The Concessionaire shall adhere to the issued bus timetable. The buses shall occupy the proper designated bay in the respective terminal as per the bus timetable. The bus bays shall be allocated for the various routes. It shall be ensured in the best possible way that the bus circulation is not in conflict with</td>
<td>To remain operational 24 hours a day throughout the year</td>
</tr>
<tr>
<td><strong>Concession Agreement</strong></td>
<td><strong>ALAMBAGH, LUCKNOW</strong></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Number of buses in queue at each Adda Fees counter</strong></th>
<th><strong>Not more than 4 buses</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Information System, Display Boards, Public Address System</td>
<td>The announcements and displays of the bus routes, arrivals and departures shall be clear, legible, audible and updated. Any change in the bus timetable, fares, routes etc. shall be immediately updated on the respective display, information boards.</td>
</tr>
<tr>
<td>Enquiry /Reservation Counter</td>
<td>The enquiry counter of the respective bus operators shall remain operational for 16 hours in a day with staff in two shifts throughout the year for the public.</td>
</tr>
<tr>
<td>Waiting Halls, Toilet Blocks and Water Chambers</td>
<td>The passenger traffic has to be managed very efficiently especially during the peak hours of the day to ensure that the passengers get the desired level of service and comfort.</td>
</tr>
<tr>
<td>Parking Area</td>
<td>The Concessionaire has to ensure that the vehicles are parked at the designated parking areas for each category of vehicles and also ensure ease of entry/exit of vehicles.</td>
</tr>
<tr>
<td>Security</td>
<td>A closed circuit system shall be strategically installed to keep track of pickpockets, thieves &amp; general surveillance of the project facility. Dome Cameras with 360 Degree revolving angle as well as fix focused telescopic cameras shall be installed, apart from manual security, to monitor various activities of the bus terminal from a control room. All the entrances of the bus terminal complex as well as the total Project facility shall be</td>
</tr>
</tbody>
</table>
equipped with x-ray machines or other such security check systems to ensure the safety of the Passengers/general public as well as the building of the facility. Concessionaire shall make the Employ security staff to ensure safe operations during day and night. They shall adequately guard the Project facilities and keep a strict vigil on the passenger movements.

<table>
<thead>
<tr>
<th>Water Supply</th>
<th>Water Supply shall be available for 24 hours at all the desired places like toilets, waiting halls, rest rooms, shops, other commercial facilities, fire fighting tank (if any), drinking water chambers, offices and canteen kitchen of the project facility.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toilets</td>
<td>To remain operational 24 hours a day throughout the year.</td>
</tr>
<tr>
<td>Waiting Hall</td>
<td>To remain operational 24 hours a day throughout the year.</td>
</tr>
<tr>
<td>Electricity and Lighting</td>
<td>Electricity shall be available for 24 hours.</td>
</tr>
<tr>
<td>Standby Generator Sets</td>
<td>Standby generator sets to supply power to the project facility must be available at all times in case of disruption or breakdown in power supply.</td>
</tr>
<tr>
<td>Telecommunication and Networking Equipments</td>
<td>These shall remain functional throughout to ensure and maintain interconnectivity between the various components of the project facility.</td>
</tr>
<tr>
<td>Bus Terminal Operation and Maintenance Office</td>
<td>This shall remain open for 12 hours (8:00 AM – 8:00 PM) a day and throughout the year to</td>
</tr>
</tbody>
</table>
ensure the supervisory functioning of the regular operations of the bus terminal.

Waiting rooms for running crew

These shall remain functional for 24 hours a day and throughout the year along with designated toilets

3.2 Emergency Operations

The Concessionaire shall be responsible for minimizing disruption to the traffic in the event of accidents/breakdowns and/or incidents affecting the safety and use of Project Facility by providing adequate warnings, informatory signs etc. and maintaining liaison procedures with emergency services. This is achieved by creating necessary provision for the following:

a) Declare a state of emergency and inform the Monitoring Committee and the Concessioning Authority
b) Remove passengers from the affected area
c) Co-ordinate with the emergency services and informing them about the situation
d) Reorganize the operations with proper information, sufficient number or warning, regulatory, information signs, displays or temporary change in bus circulation or passenger circulation
e) Attend to the affected area using manpower, machinery at Concessionaire’s disposal
f) Clear the affected site and arrange for repairs
g) Make a report of the incident to the Maintenance Board, and the Concessioning Authority

The Concessionaire shall evolve a comprehensive recovery plan for the restoration of the breakdown in the operations. The plan must be documented by record keeping procedures. The recovery plan shall include the following components:

a) Identify and prioritize essential facility functions for recovery
b) Procedures for repairs / rebuilding / modifications, if any
c) Contingencies for alternate data processing / protection of vital records
d) Identify possible alternative traffic circulation / parking plans
e) Documentation process for after action reports
f) Liaisoning with the nearby emergency services such as trauma centers, hospitals, police station, fire brigade office.
4. Performance Standard for Maintenance:

4.1 Routine Maintenance Performance Standards

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Serviceability Indicator</th>
<th>Required Maintenance Level</th>
<th>Permissible Time Limits for Repair Rectification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Civil Works</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>1.</td>
<td>Potholes in the pavement (any cavity of diameter more than 150mm and depth 25 mm or more)</td>
<td>Maximum 3 numbers in the bus circulation, roads and bay area</td>
<td>Potholes shall be repaired within 7 days after their detection</td>
</tr>
<tr>
<td>2.</td>
<td>Cracks more than 3 mm wide in the pavement</td>
<td>Maximum 5.0% in the vehicular circulation and bus bay area</td>
<td>Cracks must be sealed within 7 days after their detection by pressure grouting or guniting.</td>
</tr>
<tr>
<td>3.</td>
<td>Rutting in the pavement (Any longitudinal depression measured using 2m straight edge shall not exceed 20 mm)</td>
<td>Maximum 1.0% in The vehicular circulation and bus bay area</td>
<td>Rutting shall be repaired within 15 days after their detection.</td>
</tr>
<tr>
<td>4.</td>
<td>Cracks in building, roofs, terraces, walls and water tanks</td>
<td></td>
<td>Cracks shall be repaired within 7 days after their detection</td>
</tr>
<tr>
<td>5.</td>
<td>Worn out areas, holes in floors, damaged edges and joints of concrete/ cement Works</td>
<td></td>
<td>Shall be repaired within 15 days after their detection</td>
</tr>
<tr>
<td>6.</td>
<td>Boundary Walls</td>
<td></td>
<td>Any damage/ breach to the boundary wall of the project facility shall be rectified within three (3) days after their detection.</td>
</tr>
<tr>
<td>7.</td>
<td>Walls shall be clean without any paint wearing.</td>
<td>No stains, splits, weathered</td>
<td>Any stains, splits, weathered paint on the walls of</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<tr>
<td>8.</td>
<td>Pavement Surface shall be clean, without debris</td>
<td>Nil</td>
<td>Soil debris, trash and other objects on the surface shall be removed within 2 hours</td>
</tr>
<tr>
<td>9.</td>
<td>Flooring, skirting, dado finishes should be intact</td>
<td>Maximum 5% per 1000 sqm area</td>
<td>Any damaged, missing, crack tiles in Flooring, Skirting, Dado finishes shall be repaired, replaced within seven days of detection</td>
</tr>
<tr>
<td>10.</td>
<td>Joints in Cement Concrete Pavement</td>
<td>Maximum 60 cm length in any pavement panel.</td>
<td>To be prepared within 24 hours by special gum.</td>
</tr>
<tr>
<td>11.</td>
<td>Distress Cement Concrete Pavement</td>
<td>Cracking/settlement exceeding 5 mm</td>
<td>The distressed panel to be replaced within 30 days.</td>
</tr>
<tr>
<td>12.</td>
<td>Public Concourse Enclosure</td>
<td>No signs of distress</td>
<td>To be replaced within 7 days in case of any damage</td>
</tr>
<tr>
<td>13.</td>
<td>Staircases shall be clean and functional</td>
<td>Nil</td>
<td>The staircases shall be cleaned at least twice a day. Damaged handrails, risers or treads shall be repaired within seven days after detection.</td>
</tr>
<tr>
<td>14.</td>
<td>Cracks, spalling / scaling, blistering of plaster and damages to walls or façade</td>
<td>Maximum 5% per 1000 sqm area</td>
<td>Shall be rectified within 15 days.</td>
</tr>
<tr>
<td>15.</td>
<td>Damages to painting and finishes</td>
<td>Maximum 5% per 1000 sqm area</td>
<td>Timely intervention as and when necessary to maintain façade beauty.</td>
</tr>
<tr>
<td>16.</td>
<td>Traffic/directional signs, road/pavement markings shall be visible and legible</td>
<td>Nil</td>
<td>Any damages/wearing shall be repaired and rectified within three days.</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<td></td>
<td></td>
<td></td>
<td>The damaged and missing signs shall be replaced within fifteen days.</td>
</tr>
</tbody>
</table>

**Roof Inspection**

1. Vegetation growing on the roof
   - Timely intervention.
   - Cut any vegetation growing on the roof and fill concrete cement and mortar in that gap.

2. Vibration in roof sheeting due to windstorm.
   - Any noises due to vibration of roof sheeting shall be rectified within 3 days

3. Check for cans, bottles, leaves, rags, debris etc on the roof
   - Clear and sweep every month; before monsoons and during monsoons at closer intervals.

**Water Supply and Sanitation**

1. All drinking water chambers shall be cleaned and functional
   - A minimum of 95% drinking water chambers shall be functional
   - These shall be cleaned daily. Water supply shall be maintained for 24 hours. Drinking water quality in all the seasons shall be as per WHO standards. These chambers shall be cleaned after every six hours. Any damaged fixtures or tiles in the water chambers shall be replaced, repaired within seven days of detection.

2. Water supply pumps, pressure vessels and related components.
   - Maintained as per manuals furnished by manufacturers/original installation contractors.

3. Water valves and conveyance network
   - Do away with leakages within 3
<table>
<thead>
<tr>
<th>Sr. No</th>
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</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>(pipes).</td>
<td></td>
<td>days and blockages within 24 hours. Check the water pressure regularly.</td>
</tr>
<tr>
<td>4.</td>
<td>Clean and disinfect underground and overhead tanks.</td>
<td>Ensure that there is no deposition of sediments, organic/pathogenic growth.</td>
<td>Cleaning of water tanks should be done every month.</td>
</tr>
<tr>
<td>5.</td>
<td>Sanitary fittings</td>
<td>A minimum of 95% toilets and urinals shall be functional</td>
<td>All toilets shall be cleaned, using disinfectants, properly every 4 hours from 5.00 am to 9.00 pm. Ensure that all sanitary fittings are intact and in running condition. All leakages from the taps, flush cistern or pipes should be stopped within 24 hours. Ensure that washbasin and sanitary fittings should not get chocked at any point of time. Damaged toilets and urinal pots, washbasins, cisterns, mirrors, taps shall be replaced with the new one of the same specification within seven days of detection. Non-functional toilets, Urinals, bathrooms shall be earmarked with suitable signboards.</td>
</tr>
<tr>
<td>6.</td>
<td>External Drainage System shall be functional free</td>
<td>Nil</td>
<td>Obstructions must be cleared within two</td>
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<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
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<tr>
<td></td>
<td>from clogging</td>
<td></td>
<td>days after detection. Damages must be repaired within seven days after detection by reconstructing to the adequate shape and size. De-silting operations should be done once in a six months time with minor repairs if needed. During monsoons, any blocked vent ways shall be cleaned immediately. All filth or any other offensive matter met during the cleaning shall be disposed off properly but in no case allowed to collect/accumulate in the campus.</td>
</tr>
<tr>
<td>7.</td>
<td>Water Logging in common areas (passenger concourse, commercial complex, toilets, bathrooms, tap points etc.)</td>
<td></td>
<td>Timely intervention. Nowhere in the common area should any form of water (drinking / washing and sewage) be allowed to be collected at any time. Temporary restoration within four hours and permanent restoration within 24 hours.</td>
</tr>
<tr>
<td>8.</td>
<td>Solid Waste</td>
<td>A minimum of 95% Dustbins, spittoons shall be functional</td>
<td>To prevent any refuse or solid waste from being deposited on or in the premises (other than at the refuse</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<td></td>
<td>collection points/ bins (trash or garbage collector provided for such purpose) and to arrange for its disposal daily to secondary collection centres or designated disposal site. Closed plastic litter bins of about 30-40 litres capacity would be provided in the bus terminal as ‘community bins’ with handles on the top or on the sides, which would be used by the commuters, visitors and the tenants of the project facility. These bins would be located at regular intervals (about 50 meters). The dustbin shall be emptied after every six hours or earlier if it is full or if creates foul smell in the neighborhood.</td>
</tr>
</tbody>
</table>

**Electrical**

1. Power Supply  
   Nil  
   Any disruption in power supply shall be rectified in six hours. Standby power supply by DG sets shall be ready to be operated and should be available 24 hours. In no case power supply to common areas (passenger concourse, toilets, staircases etc.) shall
<table>
<thead>
<tr>
<th>Sr. No</th>
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<th>Permissible Time Limits for Repair Rectification</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>be stopped for more than 2 minutes during nighttime and 5 minutes during daytime.</td>
</tr>
<tr>
<td>2.</td>
<td>Electrical rooms, electrical equipments in public areas</td>
<td></td>
<td>Inspect daily to ensure that these areas are locked at all times and limited access is provided to an authorized person only.</td>
</tr>
<tr>
<td>3.</td>
<td>Cables and wires</td>
<td></td>
<td>Inspect every week to see cable and wire connections are insulated, clean and firm/intact.</td>
</tr>
<tr>
<td>4.</td>
<td>Electric Meter</td>
<td></td>
<td>Check all meters once in a month time to ensure that they are functioning and are showing correct readings.</td>
</tr>
<tr>
<td>5.</td>
<td>Light fittings, includes fluorescent, incandescent, high and or low-pressure sodium, mercury vapour and normal bulbs.</td>
<td>A minimum of 95% light fittings and fixtures shall be functional</td>
<td>Temporary measures within 4 hours. Permanent restoration within 3 days. Replacement of lamps and allied fixtures should be carried out promptly.</td>
</tr>
<tr>
<td>6.</td>
<td>Switchgear, motor control centres and circuit breaker panels</td>
<td></td>
<td>Ensure that all switchgears, motor control centres and circuit breaker panels are in a good condition. Timely intervention with temporary measures within 4 hours, permanent restoration within 7 days, depending on nature and intensity of work required as decided by the</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<td></td>
<td></td>
<td>Maintenance Board and any faulty equipment should be replaced with the same specification equipment.</td>
</tr>
<tr>
<td>7.</td>
<td>Other electrical equipments like switches, receptacles, wiring, conduit, junction boxes, lighting protection equipment etc</td>
<td>A minimum of 95% of fittings and fixtures shall be functional</td>
<td>Replace faulty electrical equipments, if required, with the same specification within 24 hours after detection.</td>
</tr>
<tr>
<td>8.</td>
<td>All Information Signages and Display Boards shall be visible, legible and functional</td>
<td>Maximum 2% number of damaged signages and boards</td>
<td>These shall be cleaned once in a week. Damaged signages and boards shall be replaced, repaired within seven days of their detection.</td>
</tr>
<tr>
<td>9.</td>
<td>Public Address System</td>
<td>Minimum of 95% of the public address system components should be functional.</td>
<td>Regular inspection and maintenance of public address system to ensure its functionality at all times. In case of any fault, temporary measures should be taken within 4 hours and permanent restoration within 7 days</td>
</tr>
<tr>
<td>10.</td>
<td>Earthing System</td>
<td></td>
<td>Regular maintenance of earthing system to ensure earth continuity at all points in the electrical system upto the main distribution board in each module.</td>
</tr>
<tr>
<td>11.</td>
<td>Pumps</td>
<td></td>
<td>The Concessionaire shall ensure that there shouldn’t be any leaking at</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<td>mechanical seal. Also check the coupling for alignment and make sure that mounting bolts are secure. Check gauges for proper operation. Also check bearing temperature/s, whether any undue noise or vibration is observed and readings of pressure, voltage and current. Any defects in pumps should be given priority and temporary Restoration should take place within six hours and permanent restoration within three days.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ventilation and Lighting</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1. Lightning shall be functional</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>The ventilators, sky-lits etc. serving as source of natural ventilation and other lighting shall be cleaned once in seven days</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Natural and Mechanical Ventilation.</td>
<td>2. Nil</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>Any disruption to mechanical ventilation, if provided shall be rectified within 24 hours. Sky-lits, ventilators, shafts etc shall be cleaned after every 15 days. Minimize noise level of the ventilation system through regular greasing of parts and</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<tr>
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<td></td>
<td>machinery and ensure that there is no excessive vibration.</td>
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<tr>
<td></td>
<td>Carpentry and Related Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Seating arrangements shall not be damaged</td>
<td>Maximum 5% number of damaged seats</td>
<td>Any damaged seat shall be repaired, replaced within three days of detection. These shall be cleaned 6 times daily and checked that they are firmly fixed/grouted to the platform with the base.</td>
</tr>
<tr>
<td></td>
<td>Other wooden furniture like almirah, office tables, chairs, shelf etc</td>
<td></td>
<td>Any damaged wooden furniture shall be repaired, replaced within seven days of detection.</td>
</tr>
<tr>
<td></td>
<td>Antitermite treatment</td>
<td></td>
<td>Take proactive action in order to save the wooden furniture and structure from termite attack. Antitermite treatment should take place at regular interval (once in a month time)</td>
</tr>
<tr>
<td></td>
<td>Maintenance of Doors and Windows</td>
<td></td>
<td>Any loose hinges of the doors and windows should be taken care off immediately after their detection. If window glass are making sound or vibrating in the windy atmosphere then make sure that there should be no gap between the</td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<tr>
<td></td>
<td>beading and glass. Any broken glass should be replaced within 3 days.</td>
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</tr>
<tr>
<td></td>
<td>Holes and depression in the wooden structure</td>
<td>Any holes and depression in the wooden structure should be immediately filled with epoxy putty after their detection.</td>
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</tr>
<tr>
<td></td>
<td>Servicing of rolling shutter</td>
<td>Regular maintenance of rolling shutter to ensure reduction in noise from opening and closing of the shutter. If rolling shutter is not functioning then replace the defective spring or/ gear mechanism within seven days.</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>Telecommunication and Networking Systems shall be functional</td>
<td>Temporary measures within 8 hours, an permanent restoration within 3 days</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Security Check Post at entrance and exit shall be clean with proper services</td>
<td>Shall be cleaned daily. No disruption in building services like lighting, electricity, and telecommunication. Display Boards shall be legible and clear. Any failure in the operation of the system mechanism (computers, printers, related softwares etc.) shall be rectified within 6 hours. There shall be computerized record keeping</td>
<td></td>
</tr>
<tr>
<td>Sr. No</td>
<td>Serviceability Indicator</td>
<td>Required Maintenance Level</td>
<td>Permissible Time Limits for Repair Rectification</td>
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<td>systems for printing/issuing and accounting of entry / exit tickets. The entry/exit ticket shall bear the Registration number, Concessionaire’s name and exit time of the bus. Daily backup/record of the data collected shall be taken.</td>
</tr>
<tr>
<td></td>
<td>Barriers shall be functional</td>
<td></td>
<td>Any failure in the functioning of the barriers shall be rectified within 6 hours.</td>
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<tr>
<td></td>
<td>Defects in all other utilities like water supply/tap/tap connections/pipe/sewer and drainage pipes/tanks &amp; overflow/glasses/window panes/all other building furniture</td>
<td></td>
<td>Timely intervention with temporary measures within 8 hours, permanent restoration within 7 days, depending on nature and intensity of work required.</td>
</tr>
<tr>
<td></td>
<td>Complaint Register shall be Functional</td>
<td></td>
<td>Shall be available in the Bus Terminal Supervisor’s office at all the times. The Complaint register shall be produced before the Maintenance Board as and when asked for.</td>
</tr>
<tr>
<td></td>
<td>Security</td>
<td></td>
<td>Provide security system and adequate security staff, as defined in schedules of Concession Agreement, so as to ensure safety of project facility and masses, especially women and</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Serviceability Indicator</th>
<th>Required Maintenance Level</th>
<th>Permissible Time Limits for Repair Rectification</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rodents/ Pest Control</td>
<td></td>
<td>Routine disinfections, once in 15 days time, by usage of chemicals of all common areas to maintain hygiene and prevent any air or water borne diseases. Special care should be taken during rainy/monsoon or any other season when the incidence of epidemics are more.</td>
</tr>
<tr>
<td></td>
<td>Fire Detection, Fire Alarm and Fire Fighting System</td>
<td>Shall be functional at all times. Defective detectors shall be replaced within 24 hours. Designed water pressure shall be maintained in the fire fighting system at all times and any leakage shall be checked within 24 hours.</td>
<td></td>
</tr>
</tbody>
</table>

4.2 Periodic/Preventive Maintenance

Apart from the routine maintenance works, the following periodic maintenance works shall be done in the Bus Terminal. All preventive maintenance work should be listed and the time of their execution should be planned beforehand at the beginning of year. For periodic maintenance, a register should be maintained and for each periodic maintenance work, some pages should be allotted. An index should be made in the beginning of the register where each preventive maintenance work is listed with the page numbers and its details. Further periodic maintenance work should be so organized that there is little inconvenience to the commuters/ users, bus movement or disruption of any activity related to the bus terminal.

4.3 Preventive Maintenance Performance Standard

<table>
<thead>
<tr>
<th>Periodic Maintenance Activities</th>
<th>Time Limit for Maintenance/Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repainting traffic markings (thermo plastic paint)</td>
<td>Once in three years or early if worn out and not visible</td>
</tr>
<tr>
<td>Periodic Maintenance Activities</td>
<td>Time Limit for Maintenance/Renewal</td>
</tr>
<tr>
<td>------------------------------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------</td>
</tr>
<tr>
<td>Repainting of Bus Terminal building and all other structures.</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Repainting/spirit polish of carpentry work like joinery, doors, windows, ventilators, wooden</td>
<td>Once in three years</td>
</tr>
<tr>
<td>furniture etc in the offices, cabins, booths etc.</td>
<td></td>
</tr>
<tr>
<td>Painting external surface with waterproofing cement paint</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Cleaning and disinfecting of water storage/ distribution tanks, water mains</td>
<td>Once in a month</td>
</tr>
<tr>
<td>Cleaning of manholes/ gully chambers/ inspection chambers and flushing of building sewers</td>
<td>Once in a six months time</td>
</tr>
<tr>
<td>Polishing wooden doors/ windows with spirit polish/ polish/ synthetic acrylic polish</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Cleaning electrical installations, fans etc</td>
<td>Once in a year or as per manufacturer’s installation,</td>
</tr>
<tr>
<td></td>
<td>operation and maintenance instruction manual.</td>
</tr>
<tr>
<td>Collection of water samples for physical, chemical and bacteriological analysis of water</td>
<td>Once in six months</td>
</tr>
<tr>
<td>Painting of external steel structures</td>
<td>Once in a three years</td>
</tr>
<tr>
<td>Painting of all pipes above the ground Level</td>
<td>Once in a three years</td>
</tr>
<tr>
<td>Painting of cooler window frames and grills, if any</td>
<td>Once in a year</td>
</tr>
<tr>
<td>Polishing of flooring</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Mechanical Equipments</td>
<td>Once in a year or as per manufacturer’s operation and</td>
</tr>
<tr>
<td></td>
<td>maintenance instruction manual</td>
</tr>
<tr>
<td>Roof Inspection</td>
<td>Once in a year and before monsoon to see whether roof</td>
</tr>
<tr>
<td></td>
<td>drainage is functioning properly. Also check for presence</td>
</tr>
<tr>
<td></td>
<td>of leaks and historical information for leaks during long</td>
</tr>
<tr>
<td></td>
<td>continued rain, leaks occurring every rain etc. Check</td>
</tr>
<tr>
<td></td>
<td>exposure of bituminous coating due to loose or missing</td>
</tr>
<tr>
<td></td>
<td>gravel or slag and fix it on an annual basis. Also check</td>
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<tr>
<td></td>
<td>all flashing for wind damage, loss of bituminous coating,</td>
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<tr>
<td></td>
<td>loose seams and edges, damaged caulking and curling, and</td>
</tr>
<tr>
<td></td>
<td>exposed edges.</td>
</tr>
<tr>
<td>Water proofing of roofs, terraces and Tanks</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Exterior coatings (water proofing) on Walls</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Transparent water proofing coating</td>
<td>Once in three years</td>
</tr>
</tbody>
</table>
### Periodic Maintenance Activities

<table>
<thead>
<tr>
<th>Activity</th>
<th>Time Limit for Maintenance/Renewal</th>
</tr>
</thead>
<tbody>
<tr>
<td>of tiles like mosaic, Dholpur, marble etc</td>
<td></td>
</tr>
<tr>
<td>Water proofing of interior walls and interior ceilings</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Damp proofing of toilets</td>
<td>Once in three years</td>
</tr>
<tr>
<td>Pumps</td>
<td>Annual maintenance, which includes:</td>
</tr>
<tr>
<td></td>
<td>1. Cleaning and examination of all</td>
</tr>
<tr>
<td></td>
<td>bearings for flaws developed.</td>
</tr>
<tr>
<td></td>
<td>2. Examination of shaft sleeves for</td>
</tr>
<tr>
<td></td>
<td>wear or scour</td>
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<tr>
<td></td>
<td>3. Impeller hubs and vane tips to</td>
</tr>
<tr>
<td></td>
<td>be checked for any pitting or erosion</td>
</tr>
<tr>
<td></td>
<td>4. All instruments and flaw meters</td>
</tr>
<tr>
<td></td>
<td>to be recalibrated</td>
</tr>
<tr>
<td></td>
<td>5. End play of all bearings to be</td>
</tr>
<tr>
<td></td>
<td>checked.</td>
</tr>
<tr>
<td>Analogous addressable fire detection, fire alarm and fire fighting</td>
<td>Once in a year including conducting</td>
</tr>
<tr>
<td>system</td>
<td>of mock drill</td>
</tr>
</tbody>
</table>

4.4 Major Maintenance Work

The Concessionaire shall be responsible at his own cost, for all maintenance and repairs of the project facility and all its components including, building, roads, pavements, buildings, toll plaza, allied works etc. The above and the other necessary standards shall conform to norms as laid out in BIS codes/IS codes/NBC codes for functional requirements of buildings etc. The performance standards shall match the service standard of comparable International practice for buildings.

4.5 Maintenance of Commercial Complex

The Concessionaire shall be responsible, at his cost, for all maintenance and repair works of the commercial complex including that of services as per provision of relevant BIS codes, National Building Code etc. to meet the functional requirement and to maintain aesthetics of the Complex, and campus as a whole. The equipment, appliances, facilities and services shall be operational at all times. The Maintenance Board shall have the right to inspect the Complex at any time to deserve the standards extent of maintenance. However before taking back the Complex, on termination of the Concession Agreement, the Complex shall be inspected by the Independent Engineer and Engineers three months prior to the expiry date and furnish the Inspection Report detailing out the defects, deficiencies in the building, services and facilities for which necessary measures are to be taken by the Concessionaire and copy of the Report shall be submitted to Concessioning Authority. The Concessionaire shall
undertake the requisite measures 15 days prior to the date of termination of the Concession Agreement to the entire satisfaction of the Independent Engineers and Engineer. It is to be understood that Buildings to be taken over by Concessioning Authority shall be structurally sound, finishing as per acceptable standards, services are fully functional and operational, equipments, appliances and machinery is in working condition supported with requisite certificate in this regard from original manufactures. The O&M Performance Security shall be returned 5 months after the Termination of the Concession Agreement. The Concessioning Authority shall have the right to undertake any necessary measures to bring the building, finishing, services and facilities to desired standards through other agencies and cost thereof shall be reimbursed by the Concessionaire or alternately Concessioning Authority shall appropriate the ailments from O&M Performance Security.
SCHEDULE V
TECHNICAL REQUIREMENTS FOR OPERATIONS AND MAINTENANCE

I. Guidelines for Inspection

5. The Concessionaire shall do periodic inspections of the Project Facility for its smooth operations as per the terms of the Concession Agreement. The inspections shall cover the following elements of the terminal facilities:

6. Primary and Secondary building structure including structural systems, walls, floors, ceilings, doors, windows, lighting etc.

7. Building electrical systems, including electrical gadgetry, main switchgear, sub panels, fire detection and fire alarms, motors, emergency lighting and generators

8. Internal and External Lighting in the bus terminal

9. Building mechanical systems, including plumbing and sanitary, ventilation, exhausts

10. Electrical distribution systems, including high voltage distribution systems, underground conduit and switchgear

11. Water distribution systems, valves, distribution heads, fire hydrants, fire-fighting system, underground and overhead water storage tank and pumping chamber. Inspect for corrosion, insulation, deterioration and leakage.

12. Sewer system, including manholes, storm and domestic sewage and valves, Inspect for general system deterioration, leaks and pipe deterioration

13. Pavement areas both in circulation bus bays and bus parking, traffic signs and Road Markings

14. Storage areas for potentially hazardous work materials

15. Information system and Public Address System, Security System

The Concessionaire shall follow three types of inspection

i. Visual Inspection

   Visual inspections are broad general inspections carried out quickly and frequently by the maintenance engineers having knowledge of the Facility. The purpose of this visual inspection is to report the deficiencies, defects and damages, which could lead to maintenance problems. Such inspections should be frequent. The visual inspection may be carried out by visual assessment with careful observation of the specific object/item of the Facility for identification and for quantification of the deficiencies or damages of the Facility.

ii. Close Inspection
The close inspection may be visual and/or supplemented by standard instrumental aides for assessment of defects/deficiencies of the Facility with careful observation of specific element(s). The close inspection may be daily / periodic but it is more intensive and would require detailed examination of elements of the Facility. It should cover all the aspects of the specific elements of Facility against a checklist. The close inspections are to be carried out quite frequently depending upon the nature of the element of Facility. This inspection is to be carried out by the Maintenance Engineer’s having good knowledge of facilities of similar nature and theoretical background to analysis the nature, and extent of defects/ deficiencies, suggests suitable remedial measures to rectify/ remedy them.

iii. Thorough Inspection

A thorough inspection is comprehensive and detailed for assessment of defects/deficiencies of the Facility by visual inspection or with aid of standard procedures.

II. Combined Inspection

The Concessionaire shall carry out combined inspections along with Maintenance Board on a regular basis. There shall be at least one combined inspection in every three months. However the Concessioning Authority is free to take up any additional inspection without notice to ensure the performance standards.

III. Rules of Operation

The Concessionaire shall observe the following rules of operations:

- Requires all Concessionaire employee or Concessionaire to wear uniform identifying themselves clearly as employees of the Concessionaire. The purpose of this rule is to distinguish Concessionaire staff from Concessioning Authority employees or state employees.

- Not allow its employees, agents or guests to create a disturbance that could be disruptive to the public’s use of the bus terminal

- Cooperate with the employees of Concessioning Authority

- Designate a person and backup persons who shall be responsible for all of the Concessionaire’s operation under this Concession Agreement.

- Ensure that its employees or agents do not engage in activities, which would lead a member of the public to believe they are State Government Employees or Concessioning Authority or its represented employees.
- Report to the Concessioning Authority in a timely manner any significant problems, its employees or agents observe in the project facility

IV. Maintenance Schedule

<table>
<thead>
<tr>
<th>Services Required</th>
<th>Daily</th>
<th>As Required</th>
<th>Weekly</th>
<th>Monthly</th>
<th>Annually</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vehicle Circulation Areas</td>
<td></td>
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<tr>
<td>Sweep Entrances</td>
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<tr>
<td>Cleaning of Embarkation Areas</td>
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<tr>
<td>Cleaning of dis Embarkation Areas</td>
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<tr>
<td>Idle Parking Area for Buses</td>
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<tr>
<td>Removal of grease or oil from parking area</td>
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<tr>
<td>Sweeping of passenger vehicle parking area</td>
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<tr>
<td>Cleaning of traffic sign/road/pavement/parking/areas</td>
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<tr>
<td>Cleaning and Watering landscape area</td>
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<tr>
<td>Boundary Wall</td>
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<tr>
<td>Exterior Walls</td>
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<tr>
<td>Arches/Domes</td>
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<tr>
<td>Chajja</td>
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<tr>
<td>Tile Terracing</td>
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<tr>
<td>Windows</td>
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<tr>
<td>Services Required</td>
<td>Daily</td>
<td>As Required</td>
<td>Weekly</td>
<td>Monthly</td>
<td>Annually</td>
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<tr>
<td>Entry and Exit Gates</td>
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<tr>
<td>Street Light Posts</td>
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<tr>
<td>Light Fixtures</td>
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<tr>
<td>Burnt out lighting fixtures</td>
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<tr>
<td>Neon Sign Boards</td>
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<tr>
<td>Public Circulation Areas</td>
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<tr>
<td>Clean Porch</td>
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<tr>
<td>Clean Circulation Area</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Empty Waste receptacles</td>
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<tr>
<td>Damp Mop Sweeping</td>
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</tr>
<tr>
<td>Furniture / Seating Berth Cleaning</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Water Fountain</td>
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<tr>
<td>Replace burnt out bulbs/ lights/ fixtures</td>
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</tr>
<tr>
<td>Ticket Counters</td>
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<tr>
<td>Staircase</td>
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<tr>
<td>Dado/ Skirting cleaning</td>
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<tr>
<td>Dusting of internal walls</td>
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<tr>
<td>Cleaning of wood works</td>
<td></td>
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</tr>
<tr>
<td>Cleaning of Windows/ window panels/ door shutters</td>
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<td></td>
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<tr>
<td>Clean railings</td>
<td></td>
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In addition Concessionaire shall undertake Operation & Maintenance of Services, Water Supply, Sewerage, Storm Water, Electrical Supply and structural part of building. Further Concessionaire shall undertake Operation and Maintenance of fire Detection system; Fire Alarm and Fire Fighting system stand by power generator and other services as per the operation and maintenance manuals of respective equipments and as per good engineering practices.

The Concessionaire shall prepare and maintain record in suitable Performa’s to ensure for compliance of Work Schedule and meeting of desired operation and conditions for the Air-conditioning in terms of Maintenance levels:

V. Guidelines for Cleaning of Project Facilities

- Trash/Garbage Receptacles (bins): All waste receptacles and other trash/garbage containers within the area should be emptied and returned to their initial location. Boxes, cans, paper or any sort of filth placed near a trash receptacle should be removed. All waste from such trash receptacles should be removed from the area and emptied into a designated trash dumpster or recycle container in such a manner so as to prevent the adjacent area from becoming littered by such trash. Areas where eatable items or the items used for carrying eatables should be disposed of daily. Large trash receptacles should be centrally located for collection of such waste and should be emptied daily. Trash receptacles in public areas and rest rooms should be emptied daily or as needed. The exterior of waste receptacles should be free of evident soil.

- Drinking Fountain: Remove all obvious soil, streaks, smudges, etc. from the drinking fountains; then, disinfect all porcelain (ceramic) and polished metal
surfaces included the orifices and drain. After cleaning, the entire drinking fountain should be free of streaks, stains, spots, and other removable soil.

- **Building and Furniture Surfaces:** Remove all dust, litter, dry soil and dirt etc. from the surfaces of desks, chairs and other types of furniture and equipment and from ledges, window sills, blinds, hand rails, light fixtures, etc. Dusting should be accomplished by removal of soil from the area not by rearranging it from one surface to another. Remove marks, streaks, etc. from washable surfaces of walls, partitions, doors, furniture, fixtures, appliances, etc. Germicidal detergent should be in use in rest rooms and drinking fountains. After spot cleaning, there should be no spots, or other evidence of removable soil. This includes both sides of glass in exterior doors.

- **Floors:** The entire area should be cleaned thoroughly to remove dust, dry soil, other litter, gum, tar, sticky substances, other spills and obvious soil. After the floor has been swept, the floor surface, including corners and abutments, should be free of litter, and spots caused by spills or tracking. Rubber, polyester and other entrance mats should be swept, vacuumed, or "hosed-down" to remove soil and grit. All entrance mats should be lifted to remove soil and moisture underneath and should then be returned to their normal location. Mop to remove all obvious soil and nonpermanent stains from the entire area. Trash receptacles, chairs, etc. should be moved when necessary to mop underneath. After being mopped, the floor should have a uniform appearance with no detergent residue, or any evidence of soil. There should be no splash marks or mop streaks on furniture, walls, etc. or mop strands remaining in the area.

- **Toilets/Wash rooms/Bathrooms:** Using germicidal detergent solution, clean and disinfect all surfaces of fixtures, walls, partitions, doors, floors, etc. After cleaning, all surfaces should be free of streaks, spots and soil. Apply germicidal detergent solution to all the basins and to the wall area beside and between the basins. Clean the tops, sides, insides, piping underneath and wall areas between the basins. Wipe the metal surfaces. Apply germicidal detergent solution to all the urinals and to the wall area between and below the urinals. Clean the seat, outside of the fixture, and wall beside the fixture. Clean the inside of the fixture including under the flushing rim. Wipe the top of the seat and the metal surfaces. De-scale Toilets and urinals; remove scale, scum, mineral deposits, rust stains, etc. from toilet bowls and urinals. After de-scaling the entire surface should be free from streaks, stains, mineral deposits, rust stains, etc. Caution must be used to prevent damage to adjacent surfaces caused by spills if acid- type bowl cleaner is used.
VI. Maintenance of Security Check Post and Entry/ Exit Gates

The maintenance of the security system as well as the entry/exit gates system is vital for the functioning of the bus terminal to achieve efficiency in operations. Any defect or deficiency in these similar kind of booths shall be rectified on a high priority basis. The routine maintenance and inspection shall ensure that there should be no structural, finishing defects in the booth or inefficient services like electricity, standby power, telecommunications, lighting etc. The Security booth has to be cleaned daily at regular intervals and maintained as per the manufacturer’s installation, operation and maintenance manual of the particular equipment. The information boards near the fee collection booth for displaying orders, notifications etc shall be cleaned daily. Illegible boards shall be repainted or replaced within seven days. These booths shall remain illuminated at all times during the night. These booths shall be repainted every year.

VII. Maintenance of Horticulture and Landscaping

The Concessionaire shall maintain the horticulture and landscaped area in the Integrated Bus Terminal-cum-Commercial Complex by ensuring that greenery should be maintained owing to proper growth of plants, trees and shrubs. These areas shall be watered at least twice in a day or depending upon the seasonal and plant requirements by proper permanent water supply arrangements. Sprinkler system or water fountains can be provided for enhancing the aesthetics of the area. The damaged railings, fences around these places shall be replaced within seven days of detection. Public thoroughfare in these places shall be restricted. Weeds and parasitic vegetation shall be removed at the earliest to ensure good growth of plants. The branches of the shrubs, plants and trees shall be trimmed if they cause hindrances in sight distance, visibility and movement of passenger and vehicular traffic. Clearance of weeds, shrubs, bush wood and congress grass shall be removed by roots. Trees shall not be cut.

VIII. Day to day Complaints and Suggestions

These are carried out on the basis of day to day complaints recorded by the occupants/users of the Project Facility like the Concessionaire’s maintenance staff, shopkeepers, Concessioning Authority staff and the complaints filed by the commuters/passengers. Sufficient number of complaint/suggestion boxes should be placed in passenger circulation areas, apart from a complaint register with the Public Relation Officer of the project facility deployed by the Concessionaire or Station Supervisor of the bus terminal where these complaints can be placed or filed. The Maintenance Supervisor should see these suggestion/complaints two times in a day; one in the morning and one in the afternoon and redress these complaints on a priority basis. The Maintenance Supervisor shall make necessary entries in complaint register about date of compliance of the complaints along with his signature and remarks, if any.

IX. Materials and Products
The best available time tested material and products, as approved by Independent Engineer and Engineer, shall be used for Operation and Maintenance Services. Approved makes of materials and products shall be charged with prior approval of independent Engineer and Engineer for which necessary sanction shall be arranged by submission of samples with test results to establish its suitability and meeting the required standards.
Schedule – VI

Reports During the O & M phase, the Concessionaire shall submit the various reports to the Maintenance Board, which are mentioned below.

Asset Register
The Concessionaire shall carry out a joint inspection along with the Concessioning Authority to prepare the detailed inventory cum condition surveys of all the assets of the bus terminal. The formats for the surveys would be prepared by the Concessionaire and duly approved by the Concessioning Authority before the joint survey. The assets register shall include all the assets along with its condition at the time of the joint inspections. It shall be submitted within 30 days of completion of Construction of Bus Terminal

Complaint Register
The Concessionaire should maintain a routine maintenance register to record day-to-day complaints of the passenger/commuters/users and also the general complaints relating to site and common areas noticed by Concessionaire and the Concessioning Authority. The Concessionaire shall maintain a Public Relations Office (PRO) at a convenient location, to be approved by Concessioning Authority and keep it open to public access for 12 hours i.e., 8:00 AM to 8:00 PM. At such office, the Concessionaire shall open and maintain a Complaint Register for recording of complaints by any person. The availability and access to such office and the Complaint Register shall be prominently displayed by the Concessionaire at the Passenger Entry & Exit of the Bus Terminal as well as Commercial Complex/tower so as to bring it to the attention of all persons who are exiting and entering the Facility. The name of the Concessionaire/ Promoters shall also be displayed prominently at the Entry & Exit Point. Also the Concessionaire has to put sufficient number of complaint and suggestion boxes in the passenger circulation areas so that the passengers/commuters can drop their complaints and suggestion at any point of time. All the complaints and suggestion from these boxes will be listed down in the complaint register.

Preventive and Periodic Maintenance Register
The Concessionaire should maintain a Preventive/ Periodic Maintenance Register, which should have the details of all Preventive/ Periodic Maintenance works being done annually or biannually or once in 2-3 years. An index should be prepared at the beginning of register where various Preventive/ Periodic Maintenance works should be listed along with the page numbers of their details. Some pages should be allotted in register for each Preventive Maintenance work. A format for Preventive/ Periodic Maintenance Register is given in Annexure II of this Schedule. The Concessionaire shall send a copy of this register to the Concessioning Authority. The register/report shall be submitted to the Concessioning Authority annually from the date of commencement of work. The Complaint Register shall be securely bound and kept in proper custody at the PRO. Each page of the register shall be duly numbered and each complaint recorded therein shall also be duly numbered. Soon after a complaint is registered the complainant shall be given a receipt stating the date and complaint number, which the complainant may refer to in subsequent
correspondence or claim. The complaints register shall have appropriate columns including but not limited to complaint number and date, name and address of the complainant and the action taken by the Concessionaire thereon and reporting to the Complainant. The Concessionaire shall inspect the complaints register two times a day, one in the morning and one in the afternoon, and take prompt steps for redress of the grievances stated in each complaint. The action so taken by the Concessionaire shall be briefly noted in the “Action Taken” column of the complaint register.

A suitable format for Routine Maintenance Register is given in Annexure I of this Schedule. The Concessionaire shall send a copy of the complaints register to the Concessioning Authority. The register/report shall be submitted to the Concessioning Authority for any calendar month within 7 days of the next calendar month. If Concessioning Authority finds that the complaint is not being redressed properly then Concessioning Authority may in its discretion direct the Concessionaire to take such further reasonable action, as Concessioning Authority may deem appropriate for a fair redressal of any grievance. Where Concessioning Authority is of the opinion that the complainant is entitled to any further redressal or compensation beyond what the Concessionaire is willing to provide, Concessioning Authority may refer the matter to the Consumer Redressal Forum having jurisdiction for its disposal in accordance with the Consumer Protection Act, 1986.

Major Maintenance Register
This register should have details of special repairs done in the bus terminal. Prior approval from Concessioning Authority must be taken before taking any major work and a copy of written approval must be attached with the page in which the recordings of the works are taking place. Some pages should be allotted in register for each major maintenance work. A format for the Major Maintenance Register is given in Annexure III of this Schedule. The Concessionaire shall send a copy of this register to the Concessioning Authority. The register/report shall be submitted to the Concessioning Authority for any calendar month within 7 days of the next calendar month and a blank report if no major work has been undertaken during this period.

Schedules for Inspection of Buildings, Services and Maintenance Undertaken
The Concessionaire should prepare a register in which close inspections on a monthly basis of Project Facility and maintenance undertaken should be jotted down. A format for same is given in Annexure IV of this Schedule. The Concessionaire shall submit a copy of this register to the Concessioning Authority for any calendar month within 7 days of the next calendar month.

Traffic Report
The Concessionaire shall maintain four register on bus movement each one for UPSRTC, other State Transport, UPSRTC affiliated buses and maintain the daily traffic information in the format given in Annexure V of this Schedule. Based on the information collected daily the Concessionaire shall submit monthly traffic report indicating the daily frequency of buses and daily Adda Fees collection. A format for the same is given in Annexure VI of this Schedule. The traffic report shall be submitted to the UPSRTC for any calendar month within 7 days of the next calendar month.

Action Taken Progress Report (Quarterly)
The progress report is to be submitted to the Concessioning Authority within 10 days of the Maintenance Board meeting, which will be held every quarter. It shall contain details of meetings, decisions taken. The report shall clearly contain performance data for the terminal. A format for the same is given in Annexure VII of this Schedule.

Handing Over Report
The Handing over Report is the final report to be submitted by the Concessionaire to the Maintenance Board after completion of the Concession Period as per terms of the Concession Agreement both for Bus Terminal, as well as total Project Facility, wherever applicable. The report shall contain the summary of method of operations and maintenance; supervision performed, as built drawings if any, problems encountered and remedial measures undertaken during the Concession Period. It shall contain an updated assets register incorporating the condition and repair works undertaken for each of the assets.
Annex - I

(Schedule-K)

Repair/Rectification of Defects and Deficiencies

The Concessionaire shall repair and rectify the defects and deficiencies specified in this Annex-I of Schedule-K within the time limit set forth herein.¹⁴
SCHEDULE –L
(See Clause 18.1.1)

SAFETY REQUIREMENTS

1 Guiding principles

1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Bus Terminal, irrespective of the person(s) at fault.

1.2 Users of the Bus Terminal include staff of the Concessionaire and its contractors working on the Bus Terminal.

1.3 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.

1.4 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in Annex - I of this Schedule - L.

2 Obligations of the Concessionaire

The Concessionaire shall abide by the following insofar as they relate to safety of the Users:

(a) Applicable Laws and Applicable Permits;
(b) Manual for Safety, issued by the Authority;
(c) provisions of this Agreement; and
(d) relevant Standards/Guidelines contained in internationally accepted codes; and
(e) Good Industry Practice.

3 Appointment of Safety Consultant

For carrying out safety audit of the Bus Terminal 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”).

4 Safety measures during Development Period

4.1 No later than 90 (ninety) days from the date of this Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project.
4.2 The Concessionaire shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Users (the “Safety Drawings”). Such design details shall include horizontal and vertical alignments; sightlines; layouts of viaducts, tunnels, elevated structures and bus terminals along with other incidental or consequential information. The Safety Consultant shall review the design details and forward three copies of the Safety Drawings with its recommendations, if any, to the Independent Engineer who shall record its comments, if any, and forward one copy each to the Authority and the Concessionaire.

4.3 The design details shall be compiled, analysed and used by the Safety Consultant for evolving a package of recommendations consisting of safety related measures for the Bus Terminal. The safety audit shall be completed in a period of three months and a report thereof (the “Safety Report”) shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Concessionaire and the Independent Engineer forthwith.

4.4 The Concessionaire shall endeavour to incorporate the recommendations of the Safety Report in the design of the Bus Terminal, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, Manuals and Guidelines of the Authority, Specifications and Standards, and Good Industry Practice. If the Concessionaire does not agree with any or all of such recommendations, it shall state the reasons thereof and convey them to the Authority forthwith. In the event that any or all of the works and services recommended in the Safety Report fall beyond the scope of Schedule-B, Schedule-C or Schedule-D, the Concessionaire shall make a report thereon and seek the instructions of the Authority for funding such works in accordance with the provisions of Article 18.

4.5 Without prejudice to the provisions of Paragraph 4, the Concessionaire and the Independent Engineer shall, within 15 (fifteen) days of receiving the Safety Report, send their respective comments thereon to the Authority, and no later than 15 (fifteen) days of receiving such comments, the Authority shall review the same along with the Safety Report and by notice direct the Concessionaire to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify; provided that any works or services required to be undertaken hereunder shall be governed by the provisions of Article 18.

5 Safety measures during Construction Period

5.1 A Safety Consultant shall be appointed by the Authority, no later than 6 (six) months prior to the expected Project Completion Date, for carrying out a safety audit of the completed Construction Works.

5.2 The Safety Consultant shall study the Safety Report for the Development Period and inspect the Bus Terminal to assess the adequacy of safety measures. The Safety Consultant shall complete the safety audit within a
period of 4 (four) months and submit a Safety Report recommending a package of additional safety measures, if any, that are considered essential for reducing accident hazards on the Bus Terminal. Such recommendations shall be processed, *mutatis mutandis*, and acted upon in the manner set forth in Paragraphs 4.3, 4.4 and 4.5 of this Schedule-L.

5.3 The Concessionaire shall make adequate arrangements during the Construction Period for the safety of workers and road users in accordance with Applicable Laws and Good Industry Practice for safety in construction zones, and notify the Authority and the Independent Engineer about such arrangements.

6 Safety measures during Operation Period

6.1 The Concessionaire shall develop, implement and administer a surveillance and safety programme for Users, including correction of safety violations and deficiencies and all other actions necessary to provide a safe environment in accordance with this Agreement.

6.2 The Concessionaire shall establish a Bus Terminal Safety Management Unit (the “BTSMU”) to be functional on and after COD, and designate one of its officers to be in-charge of the BTSMU. Such officer shall have specialist knowledge and training in Bus Terminal safety by having attended a course conducted by a reputed organisation on the subject.

6.3 The Concessionaire shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Bus Terminal. In addition, the Concessionaire shall also collect data for all cases of accidents not recorded by the Police. The information so collected shall be summarised in the form prescribed by the Authority for this purpose. The Concessionaire shall also record the exact location of each accident on a route map. The aforesaid data shall be submitted to the Authority at the conclusion of every quarter and to the Safety Consultant as and when appointed.

6.4 The Concessionaire shall submit to the Authority before the 31st (thirty first) May of each year, an annual report (in ten copies) containing, without limitation, a detailed listing and analysis of all accidents of the preceding Accounting Year and the measures taken by the Concessionaire pursuant to the provisions of Paragraph 6.1 of this Schedule-L for averting or minimising such accidents in future.

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

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

Safety Guidelines

1 Safe movement

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

2 System integrity

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

3 Restoration of service

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

4 Safety management

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

5 Safety equipment

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

6 Emergency

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

7.1 The Concessionaire shall adopt provisions of the National Fire Protection Association (NFPA) 130 standard for fixed guideway transit. To prevent fire in the passenger areas, the Concessionaire shall use fire resistant materials in the construction thereof and shall avoid use of materials which are to some extent flammable, or which emit smoke and harmful gases when burning.

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

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

8 User safety and information system:

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

8.2 The User information system shall comprise dynamic visual displays and loudspeakers.
SCHEDULE –M
(See Clauses 19.6 and 22.1)

MONTHLY FARE STATEMENT

Bus Terminal:               Month:
SCHEDULE-N
(See Clause 21.8)

PASSENGER CHARTER
*** Bus Terminal

[To be decided upon by the UPSRTC and Successful Bidder]

SCHEDULE –O

Deleted
SELECTION OF INDEPENDENT ENGINEER

1 Selection of Independent Engineer

1.1 The provisions of Part II of the Standard Bidding Documents for Consultancy Assignments: Time Based (Volume V) issued by the Ministry of Finance, GOI in July, 1997 or any substitute thereof shall apply, *mutatis mutandis*, for invitation of bids and evaluation thereof save as otherwise provided herein.

1.2 The Authority shall invite expressions of interest from consulting engineering firms or bodies corporate to undertake and perform the duties and functions set forth in Schedule-Q and thereupon shortlist 6 (six) qualified firms in accordance with pre-determined criteria. The Authority shall convey the aforesaid list of firms to the Concessionaire for scrutiny and comments, if any. The Concessionaire shall be entitled to scrutinise the relevant records of the 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 list of firms. Upon receipt of such comments, if any, the Authority shall, after considering all relevant factors, finalise and constitute a panel of 6 (six) firms (the “Panel of Firms”) and convey its decision to the Concessionaire.

1.3 The Authority shall invite the aforesaid firms in the Panel of Firms to submit their respective technical and financial offers, each in a separate sealed cover. All the technical bids so received shall be opened and pursuant to the evaluation thereof, the Authority shall shortlist 3 (three) eligible firms on the basis of their technical scores. The financial bids in respect of such 3 (three) firms shall be opened and the order of priority as among these firms shall be determined on the basis of a weighted evaluation where technical and financial scores shall be assigned respective weights of 80:20.

1.4 In the event that the Authority shall follow the selection process specified in the Model RFP for selection of Technical Consultants, as published by the Ministry of Finance/ Planning Commission, the selection process specified in this Schedule-P shall be deemed to be substituted by the provisions of the said Model RFP and the Concessionaire shall be entitled to scrutinise the relevant records forming part of such selection process.

2 Fee and expenses

2.1 In determining the nature and quantum of duties and services to be performed by the Independent Engineer during the Development Period and Construction Period, the Authority shall endeavour that payments to the Independent Engineer on account of fee and expenses do not exceed [1% (one per cent)] of the Total Project Cost. Payments not exceeding such [1%
(one per cent) shall be borne equally by the Authority and the Concessionaire in accordance with the provisions of this Agreement and any payments in excess thereof shall be borne entirely by the Authority.

2.2 The nature and quantum of duties and services to be performed by the Independent Engineer during the Operation Period shall be determined by the Authority in conformity with the provisions of this Agreement and with due regard for economy in expenditure. All payments made to the Independent Engineer on account of fee and expenses during the Operation Period, including the construction of System Augmentation, shall be borne equally by the Authority and the Concessionaire.

3 Constitution of fresh panel

No later than 3 (three) years from the date of this Agreement, and every 3 (three) years thereafter, the Authority shall prepare a fresh panel of firms in accordance with the criteria set forth in this Schedule-P; provided that the Authority may, at any time, prepare a fresh panel with prior written consent of the Concessionaire.

4 Appointment of government entity as Independent Engineer

[Notwithstanding anything to the contrary contained in this Schedule, the Authority may in its discretion appoint a government-owned entity as the Independent Engineer; provided that such entity shall be a body corporate having as one of its primary function the provision of consulting, advisory and supervisory services for engineering projects; provided further that a government-owned entity which is owned or controlled by the State Government shall not be eligible for appointment as Independent Engineer.]
SCHEDULE –Q
(See Clause 23.2.1)

TERMS OF REFERENCE FOR INDEPENDENT ENGINEER

1 Scope

1.1 These Terms of Reference for the Independent Engineer (the “TOR”) are being specified pursuant to the Concession Agreement dated ……….. (the “Agreement”), which has been entered into between the Authority t and ……………….. (the “Concessionaire”) for the Bus Terminal at *** on design, build, finance, operate and transfer (DBFOT) basis, and a copy of which is annexed hereto and marked as Annex-A to form part of this TOR.

1.2 This TOR shall apply to construction, operation and maintenance of the Bus Terminal, and shall apply, mutatis mutandis, to System Augmentation thereof

2 Definitions and interpretation

2.1 The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.

2.2 References to Articles, Clauses and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Clauses and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.

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

3 Role and functions of the Independent Engineer

3.1 The role and functions of the Independent Engineer shall include the following:

(i) review of the Drawings and Documents as set forth in Paragraph 4;

(ii) review, inspection and monitoring of Construction Works as set forth in Paragraph 5;

(iii) review, inspection and testing of rolling stock as set forth in Paragraph 5;

(iv) conducting Tests on completion of construction and issuing Completion/ Provisional Certificate as set forth in Paragraph 5;

(v) review, inspection and monitoring of O&M as set forth in Paragraph 6;
(vi) review, inspection and monitoring of Divestment Requirements as set forth in Paragraph 7;

(vii) determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;

(viii) determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;

(ix) assisting the Parties in resolution of disputes as set forth in Paragraph 9; and

(x) undertaking all other duties and functions in accordance with the Agreement.

3.2 The role and functions of the Independent Engineer shall not include construction works comprising the Commercial Complex.

3.3 The Independent Engineer shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4 Development Period

4.1 During the Development Period, the Independent Engineer shall undertake a detailed review of the Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations, characteristics of materials from borrow areas and quarry sites, topographical surveys and traffic surveys. The Independent Engineer shall complete such review and send its comments/observations to the Authority and the Concessionaire within 15 (fifteen) days of receipt of such Drawings. In particular, such comments shall specify the conformity or otherwise of such Drawings with the Scope of the Project and Specifications and Standards.

4.2 The Independent Engineer shall review any modified Drawings or supporting Documents sent to it by the Concessionaire and furnish its comments within 7 (seven) days of receiving such Drawings or Documents.

4.3 The Independent Engineer shall review the Drawings sent to it by the Safety Consultant in accordance with Schedule-L and furnish its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receiving such Drawings. The Independent Engineer shall also review the Safety Report and furnish its comments thereon to the Authority within 15 (fifteen) days of receiving such report.

4.4 The Independent Engineer shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.
4.5 The Independent Engineer shall review the detailed design and the manufacturing, installation, testing and commissioning plans sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof.

4.6 Upon reference by the Authority, the Independent Engineer shall review and comment on the EPC Contract or any other contract for construction, operation and maintenance of the Bus Terminal, and furnish its comments within 7 (seven) days from receipt of such reference from the Authority.

5 Construction Period

5.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.

5.2 The Independent Engineer shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

5.3 The Independent Engineer shall inspect the Construction Works once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such inspection (the “*Inspection Report*”) setting forth an overview of the status, progress, quality and safety of construction, including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of the Project and the Specifications and Standards. In a separate section of the Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Bus Terminal. The Inspection Report shall also contain a review of the maintenance of the existing roads in conformity with the provisions of the Agreement. The Independent Engineer shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

5.4 The Independent Engineer may inspect the Bus Terminal more than once in a month if any lapses, defects or deficiencies require such inspections.

5.5 For determining that the Construction Works conform to Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Independent Engineer in accordance with Good Industry Practice for quality assurance. The Independent Engineer shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.

5.6 The sample size of the tests, to be specified by the Independent Engineer under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality
Control Manuals; provided that the Independent Engineer may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.

5.7 The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance/rejection of their results shall be determined by the Independent Engineer in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the tests that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.

5.8 In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.

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

5.10 If at any time during the Construction Period, the Independent Engineer determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users, it shall make a recommendation to the Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.

5.11 In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and Users, it may, by notice in writing, require the Independent Engineer to inspect such works, and within 3 (three) days of receiving such notice, the Independent Engineer shall inspect the suspended works and make a report to the Authority forthwith, recommending whether or not such suspension may be revoked by the Authority.

5.12 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine the extension of dates set forth in the Project Completion Schedule, to which the Concessionaire is reasonably entitled, and shall notify the Authority and the Concessionaire of the same.
5.13 The Independent Engineer shall carry out, or cause to be carried out, all the Tests specified in Schedule-I and issue a Completion Certificate or Provisional Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Independent Engineer shall act under and in accordance with the provisions of Article 14 and Schedule-I.

5.14 Upon reference from the Authority, the Independent Engineer shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 16 and certify the reasonableness of such costs for payment by the Authority to the Concessionaire.

5.15 The Independent Engineer shall aid and advise the Concessionaire in preparing the Maintenance Manual.

6 Operation Period

6.1 In respect of the Drawings, Documents and Safety Report received by the Independent Engineer for its review and comments during the Operation Period, the provisions of Paragraph 4 shall apply, mutatis mutandis.

6.2 The Independent Engineer shall review the annual Maintenance Programme furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 15 (fifteen) days of receipt of the Maintenance Programme.

6.3 The Independent Engineer shall review the monthly status report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.

6.4 The Independent Engineer shall inspect the Bus Terminal, once every month, preferably after receipt of the monthly status report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out an O&M Inspection Report setting forth an overview of the status, quality and safety of O&M including its conformity with the Key Performance Indicators, Maintenance Requirements and Safety Requirements. In a separate section of the O&M Inspection Report, the Independent Engineer shall describe in reasonable detail the lapses, defects or deficiencies observed by it in O&M of the Bus Terminal. The Independent Engineer shall send a copy of its O&M Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.

6.5 The Independent Engineer may inspect the Bus Terminal more than once in a month, if any lapses, defects or deficiencies require such inspections.

6.6 The Independent Engineer shall in its O&M Inspection Report specify the tests, if any, that the Concessionaire shall carry out, or cause to be carried out, for the purpose of determining that the Bus Terminal is in conformity with the Maintenance Requirements. It shall monitor and review the results of such tests and the remedial measures, if any, taken by the Concessionaire in this behalf.
6.7 In respect of any defect or deficiency referred to in Paragraph 3 of Schedule-K, the Independent Engineer shall, in conformity with Good Industry Practice, specify the permissible limit of deviation or deterioration with reference to the Specifications and Standards and shall also specify the time limit for repair or rectification of any deviation or deterioration beyond the permissible limit.

6.8 The Independent Engineer shall determine if any delay has occurred in completion of repair or remedial works in accordance with the Agreement, and shall also determine the Damages, if any, payable by the Concessionaire to the Authority for such delay.

6.9 The Independent Engineer shall examine the request of the Concessionaire for closure of any track of the Bus Terminal for undertaking maintenance/repair thereof, keeping in view the need to minimise disruption in traffic and the time required for completing such maintenance/repair in accordance with Good Industry Practice. It shall grant permission with such modifications, as it may deem necessary, within 3 (three) days of receiving a request from the Concessionaire. Upon expiry of the permitted period of closure, the Independent Engineer shall monitor the re-opening of such track(s), and in case of delay, determine the Damages payable by the Concessionaire to the Authority under Clause 17.7.

6.10 The Independent Engineer shall monitor and review the curing of defects and deficiencies by the Concessionaire as set forth in Clause 19.5.

6.11 In the event that the Concessionaire notifies the Independent Engineer of any modifications that it proposes to make to the Bus Terminal, the Independent Engineer shall review the same and send its comments to the Authority and the Concessionaire within 15 (fifteen) days of receiving the proposal.

6.12 Audit of Fare collection system
The Independent Engineer shall, at least once every month, conduct an audit of the working of the automatic Fare collection system installed by the Concessionaire, to check its accuracy in recording the entry and exit of Users and in recording the Fare.

6.13 The Independent Engineer shall undertake traffic sampling, as and when required by the Authority, under and in accordance with Article 22 and Schedule-O.

7 Termination

7.1 At any time, not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Independent Engineer shall, in the presence of a representative of the Concessionaire, inspect the Bus Terminal for determining compliance by the Concessionaire with the Divestment Requirements set forth in Clause 38.1 and, if required, cause tests to be carried out at the Concessionaire’s cost for determining such compliance. If the Independent Engineer determines that the status of the Bus Terminal is such that its repair and rectification would require a larger
amount than the sum set forth in Clause 39.2, it shall recommend retention of
the required amount in the Escrow Account and the period of retention
thereof.

7.2 The Independent Engineer shall inspect the Bus Terminal once in every
15(fifteen) days during a period of 90 (ninety) days after Termination for
determining the liability of the Concessionaire under Article 39, in respect of
the defects or deficiencies specified therein. If any such defect or deficiency
is found by the Independent Engineer, it shall make a report in reasonable
detail and send it forthwith to the Authority and the Concessionaire.

8 Determination of costs and time

8.1 The Independent Engineer shall determine the costs, and/or their
reasonableness, that are required to be determined by it under the
Agreement.

8.2 The Independent Engineer shall determine the period, or any extension
thereof, that is required to be determined by it under the Agreement.

9 Assistance in Dispute resolution

9.1 When called upon by either Party in the event of any Dispute, the
Independent Engineer shall mediate and assist the Parties in arriving at an
amicable settlement.

9.2 In the event of any disagreement between the Parties regarding the meaning,
scope and nature of Good Industry Practice, as set forth in any provision of
the Agreement, the Independent Engineer shall specify such meaning, scope
and nature by issuing a reasoned written statement relying on good industry
practice and authentic literature.

10 Other duties and functions

The Independent Engineer shall perform all other duties and functions
specified in the Agreement.

11 Miscellaneous

11.1 The Independent Engineer shall notify its programme of inspection to the
Authority and to the Concessionaire, who may, in their discretion, depute
their respective representatives to be present during the inspection.

11.2 A copy of all communications, comments, instructions, Drawings or
Documents sent by the Independent Engineer to the Concessionaire pursuant
to this TOR, and a copy of all the test results with comments of the
Independent Engineer thereon shall be furnished by the Independent
Engineer to the Authority forthwith.

11.3 The Independent Engineer shall obtain, and the Concessionaire shall furnish
in two copies thereof, all communications and reports required to be
submitted, under this Agreement, by the Concessionaire to the Independent Engineer, whereupon the Independent Engineer shall send one of the copies to the Authority along with its comments thereon.

11.4 The Independent Engineer shall retain at least one copy each of all Drawings and Documents received by it, including ‘as-built’ Drawings, and keep them in its safe custody.

11.5 Upon completion of its assignment hereunder, the Independent Engineer shall duly classify and list all Drawings, Documents, results of tests and other relevant records, and hand them over to the Authority or such other person as the Authority may specify, and obtain written receipt thereof. Two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to the Authority.
SCHEDULE – R
(See Clause 27.1.1)

FEE NOTIFICATION

(To be decided by UPSRTC and the Selected Bidder at the time of Signing of Concession Agreement)

SCHEDULE – S
(See Clause 31.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this the ……….. day of ………….. 20….. AMONGST

1 …………………. Limited, a company incorporated under the provisions of the Companies Act, 1956 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 ……………………….. (name and particulars of Lenders’ Representative) and having its registered office at ………………………. acting for and on behalf of the Senior Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “Lenders’ Representative” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes);

3 ……………………….. (name and particulars of the Escrow Bank) and having its registered office at ……………………… (hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and

4 The Managing Director of UPSRTC, having its principal offices at *****] (hereinafter referred to as the “Authority ” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns).

WHEREAS:

(A) The Authority has entered into a Concession Agreement dated ………….. with the Concessionaire (the “Concession Agreement”) for Bus Terminal at ****
in the State on design, build, finance, operate and transfer basis (“DBFOT”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) The Concession Agreement requires the Concessionaire to establish an Escrow Account, inter alia, on the terms and conditions stated therein.

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

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

“Concession Agreement” means the Concession Agreement referred to in Recital (A) above and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

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

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Clause 6.1;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“Payment Date” means, in relation to any payment specified in Clause 4.1,
the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Clause 4.1 would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

1.2.3 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.

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

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

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

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

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and
safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Senior Lenders or the Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, the Authority, the Lenders’ Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3 Establishment and operation of Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Appointed Date, the Concessionaire shall open and establish the Escrow Account with the ………………… (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

2.3.3 The Escrow Bank and the Concessionaire shall, after consultation with the Lenders’ Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4 Escrow Bank’s fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Clause 4.1.

2.5 Rights of the parties

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 hereeto 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 hereeto 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 Fare levied and collected by the Concessionaire;

(d) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Bus Terminal; and

(e) all proceeds received pursuant to any insurance claims.

3.1.2 The Concessionaire may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the Authority

The Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

(a) Grant and any other monies disbursed by the Authority to the Concessionaire;

(b) Revenue Shortfall Loan;

(c) all Fare collected by the Authority in exercise of its rights under the Concession Agreement; and

(d) Termination Payments:

Provided that, notwithstanding the provisions of Clause 4.1.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any Concession Fee due and payable to it by the Concessionaire, and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Senior Lenders

The Lenders’ Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; provided that notwithstanding anything to the contrary contained in this Agreement, the Senior Lenders shall be entitled to make direct payments to the EPC Contractor under and in accordance with the express provisions contained in this behalf in the Financing Agreements.
3.4 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during Concession Period

4.1.1 At the beginning of every month, or at such shorter intervals as the Lenders’ Representative and the Concessionaire may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):

(a) all taxes due and payable by the Concessionaire for and in respect of the Bus Terminal;

(b) all payments relating to construction of the Bus Terminal, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses incurred by the Authority, provided it certifies to the Escrow Bank that it had incurred such expenses in accordance with the provisions of the Concession Agreement and that the amounts claimed are due to it from the Concessionaire;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, including repayment of Revenue Shortfall Loan;

(h) monthly proportional provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;

(i) any reserve requirements set forth in the Financing Agreements; and

(j) balance, if any, in accordance with the instructions of the Concessionaire.
4.1.2 No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders’ Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders’ Representative, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Concession Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

(a) all taxes due and payable by the Concessionaire for and in respect of the Bus Terminal;

(b) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

(c) outstanding Concession Fee;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire pursuant to the Concession Agreement, repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;

(e) retention and payments arising out of, or in relation to, liability for defects and deficiencies set forth in Article 39 of the Concession Agreement;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under the Concession Agreement; and

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

Provided that the disbursements specified in Sub-clause (j) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the Authority.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such
funds in the serial order of priority until exhaustion thereof.

4.4 **Application of insurance proceeds**

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Bus Terminal, 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 36 of the Concession Agreement. Any instructions given by the Authority to the Escrow Bank during such period shall be complied with as if such instructions were given by the Concessionaire under this Agreement and all actions of the Authority hereunder shall be deemed to have been taken for and on behalf of the Concessionaire.

5 **OBLIGATIONS OF THE ESCROW BANK**

5.1 **Segregation of funds**

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

5.2 **Notification of balances**

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders’ Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders’ Representative of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 **Communications and notices**

In discharge of its duties and obligations hereunder, the Escrow Bank:

(a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;
(b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;

(c) shall, within 5 (five) business days after receipt, deliver a copy to the Lenders’ Representative of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and

(d) shall, within 5 (five) business days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders’ Representative in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker’s lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Concessionaire (an “Escrow Default”) unless such event of default has occurred as a result of Force Majeure or any act or omission of the Authority or the Lenders’ Representative:

(a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) business days;

(b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such
transfer should have been made, within a Cure Period of 5 (five) business days; or

(c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) business days.

6.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Senior Lenders, or any of its obligations to the Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders’ Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders’ Representative and arrangements are made satisfactory to the Lenders’ Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank.

The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire and the Lenders’ Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

The Lenders’ Representative and the Concessionaire shall be entitled to enter
into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Clause 4.1.1 and for matters not covered under this Agreement such as the rights and obligations of Senior Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 **INDEMNITY**

9.1 **General indemnity**

9.1.1 The Concessionaire will indemnify, defend and hold the Authority, Escrow Bank and the Senior Lenders, acting through the Lenders’ Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement or this Agreement other than any loss, damage, cost and expense arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

9.1.3 The Escrow Bank will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2 **Notice and contest of claims**

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 9.1 or in respect of which it is entitled to reimbursement (the “**Indemnified Party**”), it shall notify the other Party responsible for indemnifying such
claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10 DISPUTE RESOLUTION

10.1 Dispute resolution

10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement, which is not resolved amicably, shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute, and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.

10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be *** and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the Courts at *** 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;
11.3 **Priority of agreements**

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.4 **Alteration of terms**

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.5 **Waiver**

11.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

11.6 **No third party beneficiaries**

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.
11.7 Survival

11.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a business day, or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by
notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.12 Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.13 Original Document

This Agreement may be executed in four counterparts, each of which when executed and delivered shall constitute an original of this Agreement.
IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

THE COMMON SEAL OF 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 ²:

SIGNED, SEALED AND DELIVERED
For and on behalf of SENIOR LENDERS by the Lenders’ Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED
For and on behalf of Authority OF *** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

In the presence of:
1. 2.

² To be affixed in accordance with the articles of association of the Concessionaire.
SCHEDULE –T
(See Clause 33.2.1)

PANEL OF CHARTERED ACCOUNTANTS

1 Panel of Chartered Accountants

Pursuant to the provisions of Clause 33.2.1 of the Agreement, the Authority and the Concessionaire shall prepare a mutually agreed panel of 5 (five) reputable firms of Chartered Accountants having their registered offices in India (the “Panel of Chartered Accountants”). The criteria for preparing such Panel and the procedure to be adopted in this behalf shall be as set forth in this Schedule-T.

2 Invitation for empanelment

2.1 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 one hundred companies registered under the Companies Act, 1956, of which at least ten should have been public sector undertakings;

(b) the firm should have at least 5 (five) practicing Chartered Accountants on its rolls, each with a minimum experience of ten years in the profession;

(c) the firm or any of its partners should not have been disqualified or black-listed by the Comptroller and Auditor General of India or the Authority; and

(d) the firm should have an office in the State or in an adjacent State with at least 2 (two) practicing Chartered Accountants on its rolls in such State.

2.2 Interested firms meeting the eligibility criteria shall be required to submit a statement of their capability including the bio-data of all the practicing Chartered Accountants on its rolls. In particular, each firm shall be required to furnish year-wise information relating to the names of all the companies with an annual turnover exceeding Rs. 25,00,00,000 (Rupees twenty five crore) whose annual accounts were audited by such firm in any of the preceding 5 (five) Accounting Years.

3 Evaluation and selection

3.1 The information furnished by each firm shall be scrutinised and evaluated by the Authority and 1 (one) point shall be awarded for each annual audit of the companies specified in Paragraph 2.2 above. (For the avoidance of doubt, a
firm which has conducted audit of the annual accounts of any such company for five years shall be awarded five points).

3.2 The 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 5 (five) firms which shall be deemed to be the mutually agreed Panel of Chartered Accountants.

5.2 After completion of every five years from the date of preparing the mutually agreed Panel of Chartered Accountants, or such earlier period as may be agreed between the Authority and the Concessionaire, a new panel shall be prepared in accordance with the provisions of this Schedule-T.
VESTING CERTIFICATE

1. The Managing Director, Uttar Pradesh State Transport Corporation (the “Authority”) refers to the Concession Agreement dated ……………..(the “Agreement”) whereby the Authority is entrusted with the development, maintenance and management of bus terminals/depots cum commercial complex at**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.

2. The Authority hereby acknowledges compliance and fulfilment by the Concessionaire of the Divestment Requirements set forth in Clause 38.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Bus Terminal shall be deemed to have vested unto the Authority, free from any encumbrances, charges and liens whatsoever.

3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Concessionaire in any manner of the same.

Signed this ……….. day of ………., 20 …… at ………………

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of

For and on behalf of

CONCESSIONAIRE by:

AUTHORITY OF ***** by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1. 

2. 

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SUBSTITUTION AGREEMENT

THIS SUBSTITUTION AGREEMENT is entered into on this the ................. day of ............. 20....

AMONGST

1 The Managing Director [Uttar Pradesh State Transport Corporation and having its principal 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 [................... Limited], a company incorporated under the provisions of the Companies Act, 1956 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 Bus Terminal at **** in the State on design, build, finance, operate and transfer basis (“DBFOT”), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.

(B) Senior Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.

(C) Senior Lenders have requested the Authority to enter into this Substitution Agreement for securing their interests through assignment, transfer and substitution of the Concession to a Nominated Company in accordance with the provisions of this Agreement and the Concession Agreement.

(D) In order to enable implementation of the Project including its financing, construction, operation and maintenance, the Authority has agreed and undertaken to transfer and assign the Concession to a Nominated Company in accordance with the terms and conditions set forth in this Agreement and the Concession Agreement.
NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Substitution Agreement and any amendment thereto made in accordance with the provisions contained in this Agreement;

“Financial Default” means occurrence of a material breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Concessionaire for a minimum period of 3 (three) months;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected by the Lenders’ Representative, on behalf of Senior Lenders, and proposed to the Authority for assignment/transfer of the Concession as provided in this Agreement;

“Notice of Financial Default” shall have the meaning ascribed thereto in Clause 3.2.1; and

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

1.2 Interpretation

1.2.1 References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Senior Lenders.

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

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

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

2.1 Assignment of rights and title

The Concessionaire hereby agrees to assign the rights, title and interest in the Concession to, and in favour of, the Lenders’ Representative pursuant to and in accordance with the provisions of this Agreement and the Concession Agreement by way of security in respect of financing by the Senior Lenders under the Financing Agreements.

3 SUBSTITUTION OF THE CONCESSIONAIRE

3.1 Rights of substitution

3.1.1 Pursuant to the rights, title and interest assigned under Clause 2.1, the Lenders’ Representative shall be entitled to substitute the Concessionaire by a Nominated Company under and in accordance with the provisions of this Agreement and the Concession Agreement.

3.1.2 The Authority hereby agrees to substitute the Concessionaire by endorsement on the Concession Agreement in favour of the Nominated Company selected by the Lenders’ Representative in accordance with this Agreement. (For the avoidance of doubt, the Senior Lenders or the Lenders’ Representative shall not be entitled to operate and maintain the Bus Terminal as Concessionaire either individually or collectively).

3.2 Substitution upon occurrence of Financial Default

3.2.1 Upon occurrence of a Financial Default, the Lenders’ Representative may issue a notice to the Concessionaire (the “Notice of Financial Default”) along with particulars thereof, and send a copy to the Authority for its information and record. A Notice of Financial Default under this Clause 3 shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Concessionaire for the purposes of this Agreement.

3.2.2 Upon issue of a Notice of Financial Default hereunder, the Lenders’ Representative may, without prejudice to any of its rights or remedies under this Agreement or the Financing Agreements, substitute the Concessionaire by a Nominated Company in accordance with the provisions of this Agreement.

3.2.3 At any time after the Lenders’ Representative has issued a Notice of Financial Default, it may by notice require the Authority to suspend all the rights of the Concessionaire and undertake the operation and maintenance of the Bus Terminal in accordance with the provisions of Article 36 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.

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 Bus Terminal 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 construct, operate and maintain the Bus Terminal 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.

3.5 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 37 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 Agreement; or

(b) no sum remains to be advanced and no sum is outstanding to the Senior Lenders, under the Financing Agreements.
7 INDEMNITY

7.1 General indemnity

7.1.1 The Concessionaire will indemnify, defend and hold the Authority and the Lenders’ Representative harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

7.1.2 The Authority will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Authority to fulfil any of its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement or this Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Authority, its officers, servants and agents.

7.1.3 The Lenders’ Representative will indemnify, defend and hold the Concessionaire harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Lenders’ Representative to fulfil its obligations under this Agreement, materially and adversely affecting the performance of the Concessionaire’s obligations under the Concession Agreement, other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Lenders’ Representative, its officers, servants and agents.

7.2 Notice and contest of claims

In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Clause 7.1 or in respect of which it is entitled to reimbursement (the “Indemnified Party”), it shall notify the other Party responsible for indemnifying such claim hereunder (the “Indemnifying Party”) within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

8 DISPUTE RESOLUTION

8.1 Dispute resolution

8.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided by reference to
arbitration to a Board of Arbitrators comprising one nominee each of the Authority, Concessionaire and the Lenders’ Representative. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the “Rules”) or such other rules as may be mutually agreed by the Parties, and shall be subject to provisions of the Arbitration and Conciliation Act, 1996.

8.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be *** and the language of arbitration shall be English.

9 MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

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

9.2 Waiver of sovereign immunity

The Authority unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Authority with respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and

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

9.3 Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.
9.4 Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.5 Waiver

9.5.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

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

9.6 No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.7 Survival

9.7.1 Termination of this Agreement:

(a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination or arising out of such termination.

9.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.
9.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 8 of this Agreement or otherwise.

9.9 Successors and assigns

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

9.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number and e-mail address are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on any day, or on a day that is a public holiday, the notice shall be deemed to be received on the first working day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

9.11 Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

9.12 Authorised representatives

Each of the Parties shall by notice in writing designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

9.13 Original Document

This Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of this Agreement.
IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of Authority OF *** by:

(Signature)
(Name)
(Designation)
(Address)
(Fax No.)
(e-mail address)

SIGNED, SEALED AND DELIVERED

For and on behalf of SENIOR LENDERS by the Lenders’ Representative:

(Signature)
(Name)
(Designation)
(Address)
(Fax)
(e-mail address)

In the presence of:

1. 2.

§ To be affixed in accordance with the articles of association of the Concessionaire.