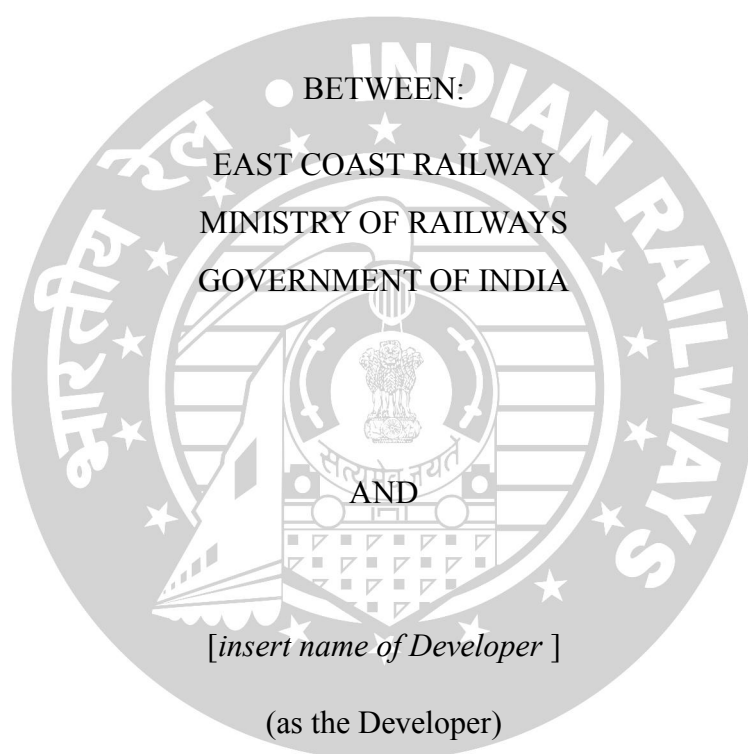


Dated: _____

DEVELOPMENT AGREEMENT

IN RELATION TO: Station Development/ Redevelopment of *Visakhapatnam Station*



DEVELOPMENT AGREEMENT

This '**Development Agreement**' is entered into on this _____ day of _____, 20____, at _____, by and between:

1. The President of India represented through [*insert name of the Authority*], [*insert description of Authority*], [*insert address of Authority*] (hereinafter referred to as "**Authority**", which term shall, unless repugnant to the context or meaning thereof, mean and include its successors and assigns) through [*insert designation of the Authorised Signatory*], being party of the First Part;

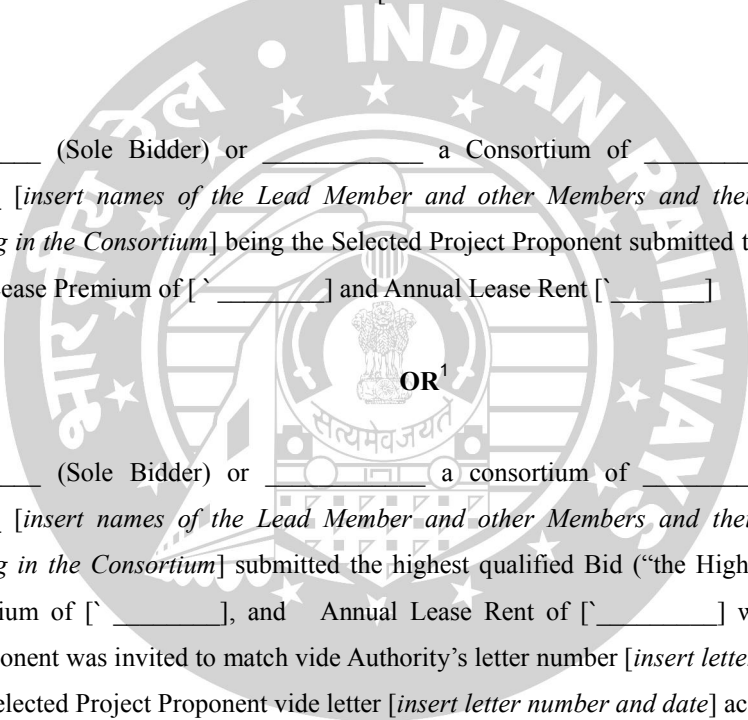
And

2. [*insert*], a company incorporated under the (Indian) Companies Act, 2013, and having its registered office at [*insert address*] (hereinafter referred to as "**Developer**", which term shall include its successors and permitted assigns) through [*insert designation of the Authorised Signatory*] duly authorised vide Resolution of its Board of Directors dated [____], being party of the Second Part;.

(Each of Authority and the Developer shall hereinafter be individually referred to as a "**Party**" and collectively as the "**Parties**".)

WHEREAS:

- A. The Ministry of Railways ("MOR") vide the Authority, who has the jurisdictional control of and has decided to develop/redevelop [*insert name of station*] ("Station") through private participation, on 'as is where is' basis, in order to bring the Station up to international standards in terms of efficiency of operations and providing the comfort and convenience to passengers and other stakeholders.
- B. The redevelopment of Station will primarily consist of upgrading the level of passenger amenities by new constructions/renovations and include redevelopment of station buildings, platform surfaces, circulating area, etc., to better serve the needs of the passengers. The Station Development/ Redevelopment is proposed to be carried out on DBFOT basis in accordance with the Development Agreement to be entered by Authority with the Developer.
- C. The Authority is mandated by the MOR for development/ redevelopment of the Station, commercial development of identified surplus railway land and air space at Station assigned to it by the MOR.

- D. The Authority had adopted a two-stage process for selection of the Bidder for award of the Project. The first stage of the process (“Invitation Stage”) involved inviting applications from interested parties/ consortia for Eligibility and Technical Proposals in accordance with the provisions of the Invitation for Qualification and Proposal dated [insert] issued by the Authority (“Invitation Document”).
- E. Pursuant to the Invitation Stage vide [insert document number and date of issue], the Authority identified the Selected Project Proponent and the Detailed Project Report was submitted by the Selected Project Proponent, in accordance with the provisions of the Invitation Document dated [insert date] issued by the Authority.
- F. In the second stage of the process (“**Bid Stage**”) vide [insert document number and date of issue], the Bidders were invited through open competitive bidding process to submit their financial offers for the Project in accordance with Bid Document No. [insert Bid Document number and date] issued by the Authority.
- G. _____ (Sole Bidder) or _____ a Consortium of _____, _____ and _____ [insert names of the Lead Member and other Members and their respective equity shareholding in the Consortium] being the Selected Project Proponent submitted the highest qualified Bid with a Lease Premium of [` _____] and Annual Lease Rent [` _____]
- 
OR¹
- _____ (Sole Bidder) or _____ a consortium of _____, _____ and _____ [insert names of the Lead Member and other Members and their respective equity shareholding in the Consortium] submitted the highest qualified Bid (“the Highest Bidder”) with a Lease Premium of [` _____], and Annual Lease Rent of [` _____] which the Selected Project Proponent was invited to match vide Authority’s letter number [insert letter number and date], which the Selected Project Proponent vide letter [insert letter number and date] accepted / refused.
- H. Subsequently, _____ (Sole Bidder) or _____ a Consortium of _____, _____ and _____ [insert names of the Lead Member and other Members and their respective equity shareholding in the Consortium]² was selected by Authority as the ‘**Selected Bidder**’ vide the Letter of Award dated _____ (the “**LOA**”).
- I. The Selected Bidder has, in accordance with the Bidding Documents and the LOA, promoted and incorporated the Developer as a public/private limited liability company under the provisions of the Companies Act, 2013 and holds 100% (99.9% in case the Selected Bidder is individual and single

¹ Retain as applicable

² Retain as applicable

Entity)³ of the paid-up and subscribed equity share capital of the Developer, and the Selected Bidder has, by its letter [insert letter number and date], requested Authority to accept the Developer as the entity, which shall undertake and perform the obligations and enjoy the rights as specified herein.

J. The Developer/Selected Bidder, in compliance of the terms and conditions of the LOA, has:

a. paid to Authority an amount of ` _____ towards the first instalment / full / part of Lease Premium as specified in the LOA, in the following manner:

- i. _____;
- ii. _____; and / or

b. deposited with Authority, on [insert date], bank guarantee of value ` _____ (Rupees _____ only) no. _____ issued by _____ dated _____⁴ towards the Performance Guarantee for Project (as defined in the Agreement);

c. deposited with Authority, on [insert date], bank guarantee of value ` _____ (Rupees _____ only) no. _____ issued by _____ dated _____⁵ towards the Performance Guarantees for Mandatory Project (as defined in the Agreement);

d. deposited with Authority, on [insert date], bank guarantee of value ` _____ (Rupees _____ only) no. _____ issued by _____ dated _____⁶ towards the SFMA Performance Guarantee (as defined in the Agreement); and

e. deposited with Authority, on [insert date], bank guarantee of value ` _____ (Rupees _____ only) no. _____ issued by _____ dated _____⁷ towards the Security Deposit (as defined in the Agreement).

J. The Developer is desirous of acquiring, and Authority has agreed to grant to the Developer, the right to undertake the Project, on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in the Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows:

³ Retain as applicable

⁴ Note: Insert as applicable in respect of each of the bank guarantees provided

⁵ Note: Insert as applicable in respect of each of the bank guarantees provided

⁶ Note: Insert as applicable in respect of each of the bank guarantees provided

⁷ Note: Insert as applicable in respect of each of the bank guarantees provided

1. In consideration of the grant of the rights by Authority to the Developer under and in accordance with the terms of the Agreement, and other consideration as set forth in the Agreement, the Developer hereby covenants with the Authority that, the Developer shall:
 - 1.1 duly provide, execute and complete the Project and shall do and perform all other acts and things in the Agreement mentioned or described or which are to be implied therein and/or may be reasonably necessary for the completion of the said Project, and at the said times and in the manner and subject to the terms, conditions and stipulations mentioned in the Agreement.
 - 1.2 duly pay to Authority, the Consideration (*as defined in the Agreement*), and all other amounts due to Authority under the Agreement, at the said times and in the manner and subject to the terms, conditions and stipulations mentioned in the Agreement.
2. Each of the Parties agrees and undertakes to perform their respective obligations, and give effect to the rights and entitlements of the other Party, in the manner and subject to the terms, conditions and stipulations mentioned in the Agreement, and to otherwise comply with the terms of the Agreement.
3. Unless terminated earlier in accordance with the Agreement or by mutual agreement between the Parties in writing, the Agreement shall expire at the end of [*Insert years and days*]⁸ from the Effective Date.
4. The Parties agree and acknowledge that notwithstanding anything contained herein or otherwise, the term 'Agreement' shall mean and include the following:
 - 4.1 the Development Agreement;
 - 4.2 the correspondence between the Parties after the issuance of the LOA attached to the Development Agreement;
 - 4.3 the LOA issued by the Authority to the Selected Bidder;

⁸ Fill details in terms of SCDA and Bid Document.

- 4.4 the Special Conditions of Development Agreement (the “SCDA”);
- 4.5 the Detailed Project Report (DPR);
- 4.6 the General Conditions of Development Agreement (the “GCDA”), including the Schedules thereto;
- 4.7 the Bid Document comprising of the instruction to the Bidder, Bid Forms and Appendices;
- 4.8 the Invitation Document.

In each case, as amended, modified and/ or clarified by all amendments, clarifications and modifications thereto, as made in accordance with their respective terms.

- 5. The Parties agree that the above documents are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in the Agreement, the priority of these documents shall, in the event of any conflict between them, be in the order as the documents have been set forth above.
- 6. Capitalised terms utilised herein but not defined shall, unless repugnant to the context thereof, have the meaning ascribed thereto in the Agreement.

IN WITNESS WHEREOF the Parties have executed these presents in the day, month, year and at the place first above written.

<p><i>Signed and executed on behalf of</i> President of India</p> <p><i>[insert name of Authority]</i></p> <p>By:</p> <p>_____</p> <p>Authorised Signatory</p>	<p><i>Signed and executed on behalf of</i> (Developer)</p> <p><i>[insert name of Developer]</i></p> <p>By:</p> <p>_____</p> <p>Authorised Signatory</p>
--	---

Name:	Name:
Designation	Designation
Witness	Witness
1	1
2	2



GENERAL CONDITIONS OF DEVELOPMENT AGREEMENT (GCDA)



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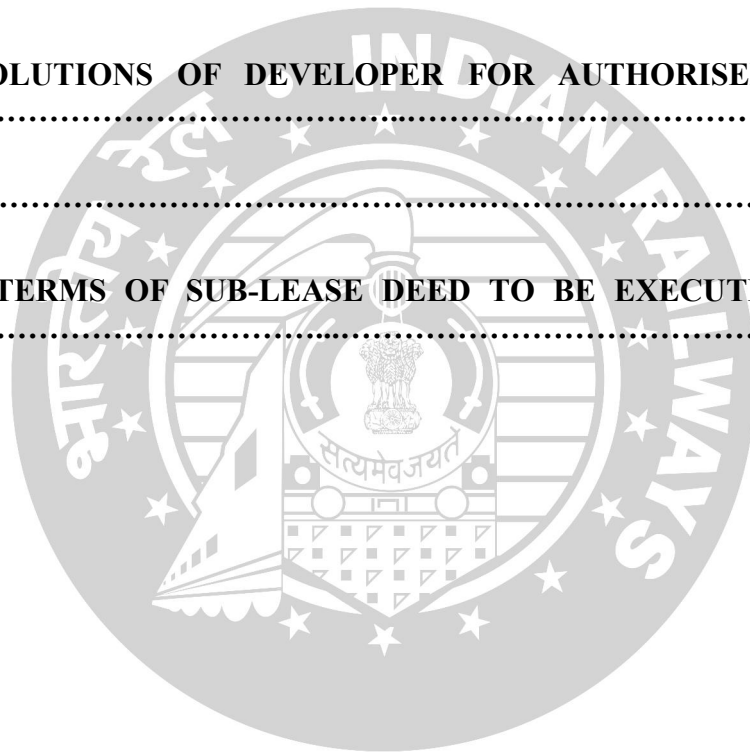
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CHAPTER I: DEFINITIONS AND INTERPRETATION

ARTICLE 1: DEFINITIONS & INTERPRETATIONS

1.1 Definitions

The following expressions used in these General Conditions of Development Agreement and elsewhere in the Agreement shall, unless repugnant to the context, have the meanings assigned to them hereunder:

1.1.1 “**Agreement**” shall collectively comprise the following:

- (a) the Development Agreement;
- (b) the correspondence between the Parties after the issuance of the LOA attached to the Development Agreement;
- (c) the LOA issued by Authority to the Selected Bidder;
- (d) the Special Conditions of Development Agreement (the “**SCDA**”);
- (e) the Detailed Project Report (DPR);
- (f) the General Conditions of Development Agreement (the “**GCDA**”), including the Schedules and Appendices thereto;
- (g) the Bid Document comprising of the instruction to the Bidder, Bid Forms and Appendices; and
- (h) Invitation Document.

In each case, as amended, modified and/ or clarified by all amendments, clarifications and modifications thereto, as made in accordance with their respective terms;

1.1.2 “**Annual Lease Rent**” shall mean the annual lease rent payable by the Developer to Authority as part of the Consideration as set forth in the Schedule of Payment hereof;

1.1.3 “**Applicable Laws**” shall mean all treaties, covenants, laws, bye-laws, statutes, rules, regulations, orders, ordinances, protocols, codes, guidelines, policies, notices, directions, judgments, rulings, rule of law, decrees or other requirements or official directives, clearances, approvals or similar form of decision of any Government Authority or person acting under any Government Authority and / or of any statutory authority in the Republic of India, whether in effect on the Effective Date of the Agreement or thereafter including *inter-alia* the Railways Act, 1989, other applicable laws and rules and regulations notified or to be notified thereunder;

1.1.4 “**Applicable Permits**” shall mean without any limitation, all clearances, licenses, permits, authorizations, no objection certificates, consents, approvals, exemptions, sanctions, rulings, renewals and no objections required to be obtained from any Government Authority or any other Authority, including but not limited to the Airports Authority of

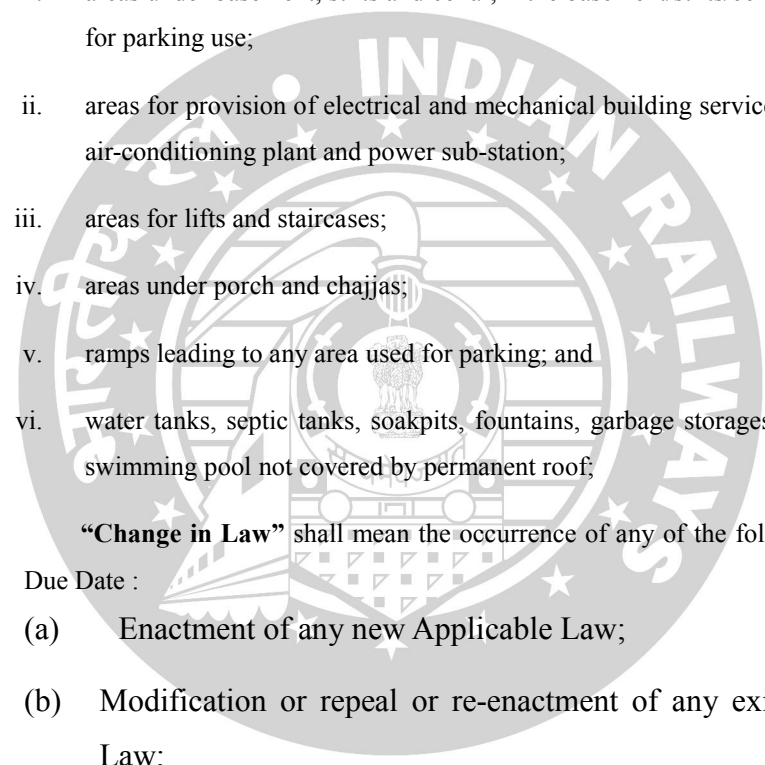
India, Archaeological Survey of India, Environment Impact Assessment Committee (“EAC”)/ State Environment Impact Assessment Committee (“SIAC”), etc., as applicable, and/or maintained under the Applicable Laws in connection with or related to the performance of the Agreement including, without limitation, the permits listed in the Schedules hereof;

- 1.1.5 “**Appointed Date**” shall mean the date as set out in the SCDA or later date that Authority may determine or any earlier date as mutually agreed by the Parties, prior to which all the Conditions Precedent specified in the GCDA and SCDA, for the full effectiveness of the provisions of the GCDA and SCDA, shall have to be met by Authority and the Developer respectively;
- 1.1.6 “**Arbitral Tribunal**” shall mean the arbitral tribunal appointed under the Agreement;
- 1.1.7 “**Assets**” shall mean all fixed assets constructed by the Developer as a part of the Project, and the “**Commercial Development Assets**”, “**Redevelopment Assets**” and the “**Station Development Assets**” shall respectively mean all fixed assets relating to the Commercial Development Project, **Redevelopment Project** and Station Development Project, respectively, but shall not include the Site;
- 1.1.8 “**Assets and Project Utility Register**” shall mean the register to be maintained by the Developer for the Assets and Project Utilities constructed by the Developer;
- 1.1.9 “**Associate**” means, in relation to a Selected Bidder / its Member, a person who directly or indirectly, controls, is controlled by, or is under the common control with such Selected Bidder/ 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 percent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise;
- 1.1.10 “**Authorised Representative**” shall mean an employee or agent of the Developer so nominated by the Developer for the purposes of the Agreement;
- 1.1.11 “**Authority Events of Default**” shall have the meaning ascribed to the term in Article 38.1.4 of the Agreement;
- 1.1.12 “**Bidder**” shall bear the meaning as ascribed to it under the Bid Documents;
- 1.1.13 “**Bid Document**” shall mean the bid document issued by the Authority by which bids were invited from Bidders in the Bid Stage for the Project;
- 1.1.14 “**Bidding Documents**” shall mean the Invitation Document, Bid Document and all other bidding documents as issued / provided by the Authority in relation to the Project;
- 1.1.15 “**Bid Due Date**” shall have the meaning ascribed to it in the Bid Document;

1.1.16 “**Bid Security**” shall have the meaning ascribed to it under the Bid Document;

1.1.17 “**Bid Stage**” shall have the meaning as ascribed to it in Recital F herein;

1.1.18 “**Built Up Area**” shall have the meaning as set out in SCDA, and if not defined in SCDA then shall mean the (a) total constructed area under roof on all floors (including underground floors) on a given piece of land in terms of local building bye laws of the Site; or (b) in the case of development of air space over any existing structure or proposed Station Development or Redevelopment Assets, the total constructed area excluding the total constructed area of the existing structure, which shall, in each case, include carpet area, thickness of walls, balconies, corridors and passages but shall not include:

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- i. areas under basement, stilts and cellar, if the basement/stilts/cellar is solely intended for parking use;
 - ii. areas for provision of electrical and mechanical building services such as generator, air-conditioning plant and power sub-station;
 - iii. areas for lifts and staircases;
 - iv. areas under porch and chajjas;
 - v. ramps leading to any area used for parking; and
 - vi. water tanks, septic tanks, soakpits, fountains, garbage storages, security posts and swimming pool not covered by permanent roof;

1.1.19 “**Change in Law**” shall mean the occurrence of any of the following after the Bid Due Date :

- (a) Enactment of any new Applicable Law;
- (b) Modification or repeal or re-enactment of any existing Applicable Law;
- (c) the commencement of any Applicable Law, after the Bid Due Date ;
- (d) Increase or decrease in the rates of Taxes;
- (e) Any change in the interpretation or application of any Applicable Law except as provided in (d) above; and
- (f) Any enactment, modification, repeal, interpretation or application of any Applicable Law which increases market prices of goods, commodities, labour and services in general;

- 1.1.20 **“Circle Rate”** as applicable for the Site shall mean the unit rate of land/ area approved / designated for commercial use as fixed by the revenue and stamps department of the respective State in which the Site is located for the purposes of payment of stamp duty on instruments with respect to land/ area(s) comprised in the Site;
- 1.1.21 **“Commercial Development”** shall mean the development, construction, operation and maintenance of the Assets and the Project Utilities by the Developer on the Site;
- 1.1.22 **“Commercial Development Plan”** shall mean the phased plan to be prepared and submitted by the Developer to the Nodal Officer / Authority giving a stage wise description of the construction development operation, maintenance, marketing and sub leasing of Commercial Development Assets (together with the rights to utilise the Commercial Development Project Utilities) of Commercial Development Project;
- 1.1.23 **“Commercial Development Project”** shall mean the development, construction, finance, operation and maintenance of the assets developed on the Reserved Railway Land and commercial air space at Station Development Land;
- 1.1.24 **“Commercial Operation”** shall mean the readiness of the Commercial Development Assets for being used for business operations upon the issue of Completion Clearance or the Provisional Completion Clearance, as the case may be, enabling the occupation of the Commercial Development Assets by the Developer or the End Users/sub-licensees or other third parties to whom the Developer has marketed the Commercial Development Project;
- 1.1.25 **“Completion Certificate”** shall mean the Completion Certificate issued by the competent local Governmental Authority to the Developer, upon the completion of the Commercial Development Project, Station Development Project and Redevelopment Project respectively, as applicable;
- 1.1.26 **“Completion Clearance”** shall mean a Completion Clearance to be issued by the Nodal Officer / Authority to the Developer, upon the completion of the Commercial Development Project, Redevelopment Project and Station Development Project, respectively, as applicable, and upon payment of amounts due and payable by Developer to Authority, including interest as on the date of issuance of such certificates;
- 1.1.27 **“Completion Date”** shall mean the date on which the Completion Clearance is issued by the Nodal Officer to the Developer, upon the completion of the Commercial Development Project, Station Development Project and Redevelopment Project, as applicable and submission by Developer of the Completion Certificate issued by the competent local Governmental Authority;
- 1.1.28 **“Conditions Precedent”** shall mean the conditions required to be satisfied by either Parties, before the rights and obligations of the Parties, save and except as expressly provided otherwise in the Agreement, becomes effective;

- 1.1.29 “**Consideration**” shall mean the payments made and to be made, as the case may be, by the Developer to Authority by way of Lease Premium, Annual Lease Rent and License Fee as may be specified in the Schedule of Payment;
- 1.1.30 “**Conciliation Committee**” shall mean conciliation committee of Authority comprising of three (3) members as nominated by the Authority;
- 1.1.31 “**Constituent**” or “**Affiliate**” shall mean an entity which directly or indirectly either controls, is controlled by, or is under common control with, the relevant person (which in case of the Selected Bidder shall include any member of Selected Bidder). As used in this definition, the expression “Control” shall include, with respect to a person which is a company or corporation, the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law or by contract or otherwise;
- 1.1.32 “**Construction Period**” shall mean the period commencing on the Appointed Date and ending on the Completion Date of the entire Project;
- 1.1.33 “**Court**” shall mean the court of competent jurisdiction of the State in which the Station is located;
- 1.1.34 “**Cure Period**” shall mean a period of 60 (sixty) days or such greater period as may be specified in the Notice of Intention to Terminate;
- 1.1.35 “**Day**” or “**day**” shall mean a calendar day of 24 (Twenty Four) hours period reckoned from one midnight to next;
- 1.1.36 “**DBFOT**” shall mean design, build, finance, operate and transfer;
- 1.1.37 “**Debt Due**” shall mean the aggregate of the following sums expressed in Indian Rupees outstanding on the date of Termination Notice:
- (a) the principal amount of the debt provided by the Lenders under the Financing Agreements for financing the Project (the “**Principal**”) but excluding any part of the Principal that had fallen due for repayment 2 (two) years prior to the date of Termination Notice;
 - (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of the debt until the date of Termination Notice but excluding (i) any interest, fees or charges that had fallen due one year prior to the date of Termination Notice;

(ii) any charges payable under the Financing Agreements to any Lender; (iii) any pre- payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Events of Default;

1.1.38 “**Debt Service**” shall mean the sum of all payments on account of principal, interest, financing fees and charges due and payable in a Financial Year/Accounting Year to the Lenders and as provided in the Financing Agreements;

1.1.39 “**Defects Liability Period**” shall, with respect to the each of the Station Development Project and Redevelopment Project respectively, mean the duration for which the Developer shall be responsible for all defects in the said works and for undertaking the necessary rectification works in respect thereof, which shall be a period of 2 (Two) years from the date of the issue of the Completion Clearance for the Station Development Project and Redevelopment Project respectively;

1.1.40 “**Design Life**” shall mean the minimum design life of 70 (Seventy) years;

1.1.41 “**Detailed Design & Drawings**” shall mean the maps, designs, drawings, plans and tracings or prints, and other designs and drawings, prepared by the Developer in accordance with the Specifications, DPR and other terms of the Agreement;

1.1.42 “**Detailed Project Report**” or “**DPR**” means the detailed project report relating to Station Development Project and Redevelopment Project attached hereto;

1.1.43 “**Developer**” shall mean the company defined as such in the Recitals of the Agreement;

1.1.44 “**Developer Events of Default**” shall have the meaning ascribed to the term in Article 38.1.3;

1.1.45 “**Dispute**” shall mean all disputes or claims and/ or differences of any kind whatsoever between the Parties arising out of or in connection with, or in relation to the Agreement, or any breach (subject to the expiry of the relevant Cure Period), termination or invalidity thereof;

1.1.46 “**Distribution(s)**” shall mean all benefits received by the shareholders or the Affiliates or the Constituents of the Developer from the Project or payments made by the Developer whether in cash through Escrow Account or otherwise, or in kind, and includes any:

- (a) dividend or other distribution in respect of share capital;
- (b) reduction of capital, redemption or purchase of shares or any other reorganisation or variation leading to reduction of share capital;
- (c) payments of brokerage costs or otherwise under the Financing

Agreements other than Debt Servicing of Principal and interest;

- (d) payment, loan, contractual arrangement or vesting of any assets or rights to the extent (in each case) it was put in place after Financial Close and was neither in the ordinary course of business nor on reasonable commercial terms; or
- (e) the receipt from novation etc. or receipts of any other benefit, which is not received in the ordinary course of business and on reasonable commercial terms;

1.1.47 “**Effective Date**” shall mean the date on which the Development Agreement is executed between the Parties;

1.1.48 “**Equity**” shall mean the sum expressed in Indian Rupees representing the paid up equity share capital in the Developer, and for the purposes of the Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Developer;

1.1.49 “**Equity IRR**” shall mean the projected annually compounded rate of return to the shareholders of the Developer on the Equity invested in the Project over the full or part of the Term beginning from the Effective Date till any date of consideration before the expiry of the Term. For the purposes of computing Equity IRR all payments toward Equity shall be considered as cash inflows and all Distributions shall be considered as cash outflows (in case of Distribution in kind, the same shall be converted into cash) in the Financial Year in which such cash flows take place;

1.1.50 “**Excepted Matters**” shall mean matters as specifically specified in the GCDA, that are not arbitrable and which shall stand specifically excluded from the purview of arbitration;

1.1.51 “**Encumbrances**” shall mean any mortgage, right of way, pledge, equitable interest, prior assignment, conditional sales contract, hypothecation, right of others, claim, security interest, title retention agreement, voting trust agreement, interest, option, lien, charge, or other condition, commitment, restriction or limitation of any nature whatsoever, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership. The word “encumber” shall be construed accordingly. This excludes any specific agreement or contract surviving the Term, at the express discretion of Authority;

1.1.52 “**End Date**” shall mean the last date of the Lease Period as specified in the SCDA;

1.1.53 “**End User**” shall mean the person to whom the Developer sub-leases / sub-licenses any spaces in the Commercial Development Assets/ Commercial Development Project Utilities for earning Project Revenues;

- 1.1.54 **“Escrow Account”** shall mean the account to be opened and maintained by the Developer 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 the Agreement, and includes the sub-accounts of such Escrow Account;
- 1.1.55 **“Escrow Agreement”** shall mean the agreement between the Developer, the Escrow Bank, the Lenders’ Representative and Authority for opening and establishing the Escrow Account, which agreement shall be substantially in the form set forth in Schedules hereto;
- 1.1.56 **“Escrow Bank”** shall mean a Scheduled Bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934 having a net worth of at least ` 1,000 Crore (Rupees One Thousand Crore), with which the Escrow Account is opened and maintained by the Developer;
- 1.1.57 **“Estimated Project Cost”** shall mean the project cost as set out in the DPR, being the sum total in respect of the Estimated Cost of Commercial Development Project, Estimated Cost of Redevelopment Project and Estimated Cost of Station Development Project, and set forth in the Schedules hereof;
- 1.1.58 **“Estimated Cost of Station Development Project”** means the estimated cost for Station Development Project as provided in the DPR;
- 1.1.59 **“Estimated Cost of Redevelopment Project”** means the estimated cost for Redevelopment Project as provided in the DPR;
- 1.1.60 **Estimated Cost of Commercial Development Project** means the estimated cost for Commercial Development Project as provided in the DPR;
- 1.1.61 **“Existing Contracts”** shall mean the existing licenses and contracts given by the Railway Administration / Authority, in relation to commercial establishments, as existing on Station Development Land, as on the date of the Agreement, and as further set out in the Schedules, which shall, for avoidance of doubt, exclude any licenses and/ or contracts in relation to any Excluded Activities and/or Railway Operational Activities;
- 1.1.62 **“Expiry Date”** shall mean the End Date or date of termination in accordance with the provisions of the Agreement which ever is earlier, which shall be the date until which the Agreement shall remain effective;
- 1.1.63 **“Floor Area Ratio”** or **“FAR”** and **“Floor Space Index”** or **“FSI”** shall have the meaning as ascribed to it the relevant Applicable Laws;
- 1.1.64 **“Financial Close”** shall mean the legally binding commitment of equity holders and debt financiers to provide or mobilize funding for the Project. Such funding must account for a

significant part of the Estimated Project Cost which should not be less than 75% (Seventy Five percent) of the Estimated Project Cost securing the construction thereof;

- 1.1.65 “**Financial Default**” shall mean occurrence of a breach of the terms and conditions of the Financing Agreements or a continuous default in Debt Service by the Developer for a period of 3 (three) months;
- 1.1.66 “**Financial Model**” shall mean the financial model, prepared by the Developer and approved/adopted by the Lenders for entering into the Financing Agreement with the Developer, setting forth the capital and operating costs of the Project including replacement costs, the mode of financing of such costs, revenues from the Project and the Equity IRR over the full Term of the Agreement on the basis of which financial viability of the Project has been determined by the Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;
- 1.1.67 “**Financial Package**” shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the Financial Model and approved by the Lenders, and includes Equity and all financial assistance specified in the Financing Agreements;
- 1.1.68 “**Financial Year**” or “**Accounting Year**” shall, for all purposes, mean the period commencing from April 1st of each year and ending on March 31st of the following year;
- 1.1.69 “**Financial Capacity**” shall have the meaning ascribed to the term in the Bid Document;
- 1.1.70 “**Financing Agreements**” shall mean the agreements executed by the Developer in respect of financial assistance to be provided by 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 financing of the Project;
- 1.1.71 “**Force Majeure Event**” shall have the meaning ascribed to the term in Article 35.1.3 hereof;
- 1.1.72 “**General Conditions of Development Agreement**” or “**GCDA**” shall mean these General Conditions of Development Agreement;
- 1.1.73 “**Good Industry Practice**” shall mean the exercise of that degree of skills, diligence, prudence and foresight in compliance with the undertakings and obligations under the Agreement, which are ordinarily and reasonably expected from a skilled and experienced person engaged in the implementation, operation and maintenance, supervision or monitoring of any of the project of the type similar to that of the Project to be adopted by the Developer, in accordance with the Agreement, Applicable Laws and Applicable Permits in a reliable, safe, economical and efficient manner;

- 1.1.74 **“Government Authority”** shall mean the Government of India, the respective State Governments , local government and any other Government Authority, statutory Authority, government department, agency, authority, commission, board, tribunal, court, any other judicial or quasi-judicial body, or other law, rule or regulation-making entity having or purporting to have jurisdiction for exercising executive, legislative, judicial, regulatory or administrative functions on behalf of the Republic of India, having jurisdiction over all or any portion of the Project Land and/or the Developer and/ or the Project. Without prejudice to the generality of the foregoing, the term Government Authority shall include the concerned Zonal Railway under MOR;
- 1.1.75 **“Guaranteed Date”** or **“Key Date”** shall mean each of the date(s) for completion of the Project **or any phase thereof as set** forth in the Schedules;
- 1.1.76 **“Indemnified Parties”** shall mean the Authority, MOR, Railway administration, Nodal Officer and its/their employees, officers and authorized representatives;
- 1.1.77 **“Interfacing Structures and Areas”** shall mean the structures, assets, and utilities which are required to interface between, or which are subject to common use or access between, the Commercial Development Project and the Station Development Project (wherever applicable as per DPR), and which shall be developed and maintained by the Developer in accordance with the Agreement;
- 1.1.78 **“Interfacing Structures and Areas Plan”** shall mean the plan to be prepared by the Developer with respect to the Interfacing Structure and Areas (wherever applicable as per DPR) which shall be consistent with the requirements specified in the Schedules;
- 1.1.79 **“Interfacing Structures and Areas Maintenance Plan”** shall mean the plan to be prepared by the Developer for the maintenance of the Interfacing Structure and Areas (wherever applicable as per DPR) in accordance with the terms of the Agreement;
- 1.1.80 **“Invitation Stage”** shall have the meaning as ascribed to it in Recital D herein;
- 1.1.81 **“Joint Inventory”** shall mean the Joint Inventory for Site, Joint Inventory for Redevelopment Land and /or Joint Inventory for Station Development Land, as applicable;
- 1.1.82 **“Lease Period”** shall mean the total lease period as set out in the SCDA.
- 1.1.83 **“Lease Premium”** shall mean the upfront lump-sum payment required to be made by the Developer to Authority in instalments in terms of the Agreement as part of the Consideration, as specified in the Schedules;
- 1.1.84 **“Lease Rights”** shall mean the leasehold rights, granted by Authority to the Developer over the Commercial Development Assets under and in accordance with the provisions of the Agreement;

- 1.1.85 “**Lease Tenure**” shall mean the lease tenure commencing from the date immediately following the expiry of 180 (One Hundred and Eight) days from Effective Date and continuing for the Lease Period or till Expiry Date, whichever is earlier.
- 1.1.86 “**Legacy Matters**” shall mean those liabilities or obligations relating to the Stations as pertaining directly to or arising out of actions or inactions during the period prior to Effective Date;
- 1.1.87 “**Lenders**” shall mean financial institutions, banks, multilateral funding agencies and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any Financing Agreements for meeting the costs of the Project;
- 1.1.88 “**Lenders’ Representative**” shall mean the Lender or Lenders’ agent duly authorized by all the Lenders to act for and on behalf of the consortium of Lenders with regard to matter arising out of and in relation to the Financing Agreements and includes its successors, assigns and substitutes;
- 1.1.89 “**Liabilities**” shall mean all direct and indirect losses, costs, damages, expenses, penalties, interest, claims (including third party claims) and liabilities, from any source whatsoever, imposed, claimed or levied or assessed against or imposed upon or incurred by the Indemnified Parties;
- 1.1.90 “**License Fee**” shall have the meaning as ascribed to it in the Station Facility Management Agreement;
- 1.1.91 “**Maintenance Period**” shall in relation to the Redevelopment Project mean the period of maintenance of the Redevelopment Project which shall commence from the Appointed Date and continue, for a period of the Defects Liability Period, and in relation to the Station Development Project shall mean the period of maintenance of the Station Development Project which shall commence from the Appointed Date and continue for the Term of SFMA as per terms set forth in the Station Facility Management Agreement;
- 1.1.92 “**Maintenance and Replacement Plan**” shall mean the plan to be prepared by the Developer for maintenance and replacement of Assets and Project Utilities relating to the Commercial Development Project, which plan shall be prepared consistent with the requirements of the Schedules;
- 1.1.93 “**Mandatory Assets**” shall mean collectively the Redevelopment Assets and the Station Development Assets;
- 1.1.94 “**Mandatory Project**” shall mean collectively the Redevelopment Project and the Station Development Project;
- 1.1.95 “**Mandatory Project Land**” shall mean collectively the Redevelopment Land and Station Development Land;

- 1.1.96 “**Mandatory Project Utilities**” shall mean collectively the Redevelopment Project Utilities and the Station Development Project Utilities;
- 1.1.97 “**Manual**” shall mean the Manual of Standards and Specifications for Railway Stations for Development of World class Stations through Public Private Partnership, available on the website www.indianrailways.gov.in;
- 1.1.98 “**Master Plan**” shall mean the master plan for the Project Land showing the various Project components including the Commercial Development, Redevelopment, Station Development, temporary works areas, reserved areas, Interfacing Areas, etc. as annexed in the **Schedule 1G** (*Master Plan*) hereof;
- 1.1.99 “**Material Adverse Effect**” shall mean circumstances which may or do (a) render any right vested in a Party by the terms of the Agreement ineffective, or (b) adversely affect or restrict or frustrate the ability of any Party to observe and perform in a timely manner its obligations under the Agreement or the legality, validity, binding nature or enforceability of the same;
- 1.1.100 “**Net Present Value**” or “**NPV**” with respect to any Asset shall mean the discounted value as estimated on the date of valuation, of the free cash flows (reflecting the then prevailing market value of the underlying land as on valuation date) expected to be generated by the said Asset from the valuation date for economic life or lift of such asset as intended under the current Master Plan whichever is lower, assuming no residual value of the Asset at the end of such economic life or term, whichever is earlier;
- 1.1.101 “**Nodal Officer**” shall mean the officer(s) of the appropriate rank, nominated by Authority as executive in-charge of the Project, from time to time;
- 1.1.102 “**Nominated Company**” shall mean the entity that is selected either by the Lenders’ Representative or by Authority for substituting the Developer, upon the occurrence of a Developer’s Event of Default or Financial Default, in terms of the provisions of the Agreement and the Substitution Agreement;
- 1.1.103 “**Notice of Intention to Terminate**” shall mean the notice issued by a Party to the other Party expressing its intention to terminate the Agreement;
- 1.1.104 “**O&M Expenses**” shall mean expenses incurred by or on behalf of the Developer for all operation and maintenance expenses for the Commercial Development Project, the Redevelopment Project (ending at the expiry of the its Maintenance Period) and the Station Development Project (excluding the Railway Operational Activities) (ending at the expiry of its Maintenance Period) as more particularly set out in the Station Facility Management Agreement and including (a) cost of salaries or other compensation to employees; (b) cost of material supply or utilities and other services; (c) premia for insurance; (d) all taxes, duties, cess and fees due and payable in respect of operation and maintenance; (e) all repair, replacement, reconstruction, reinstatement, improvement and

maintenance costs of the relevant Assets and Project Utilities; (f) all other expenditure required to be made under Applicable Laws, Applicable Permits or the Agreement;

- 1.1.105 **“Occupied Redevelopment Areas”** shall mean the land, building, structures and associated utilities, and common areas which will require the creation of the new or corresponding Redevelopment Assets prior to their hand-over to the Developer and set forth in the Schedules;
- 1.1.106 **“Party”** shall mean Authority or Developer, as the case may be. Authority and the Developer, shall collectively be referred to as Parties;
- 1.1.107 **“Payment Default”** shall mean the failure on part of the Developer to make payment of the full amount of any instalment of the Lease Premium and/or the Annual Lease Rent along with the applicable interest thereof or failure to make any other payment due to be paid by the Developer to Authority, by the respective due date thereof;
- 1.1.108 **“Performance Guarantee”** shall mean each of the bank guarantees submitted by the Developer as security /guarantee against (a) any default in timely payment of Consideration, other dues to Authority and fulfilment of other obligations as per the Agreement including timely completion of the Commercial Development Project; (b) the successful performance and completion of the Mandatory Project, and (c) any default in timely payment of dues to the Authority, default in provision of facility management services and fulfilment of other obligations as per the Station Facility Management Agreement, and shall be referred to as **“Performance Guarantee for Project”**, **“Performance Guarantee for Mandatory Project”**, and **“SFMA Performance Guarantee”** respectively;
- 1.1.109 **“Project”** shall mean the Station Development Project, Redevelopment Project and Commercial Development Project and includes all works related to or incidental to or required to be undertaken upon, the Site, the Station Development Land and the Redevelopment Land respectively for development of Assets and Project Utilities in accordance with the provisions of the Agreement and Applicable Laws;
- 1.1.110 **“Project Cost”** shall mean the cost incurred by the Developer on the Project during the Construction Period including payment of Consideration (excluding interest) to Authority;
- 1.1.111 **“Project Land”** shall mean the total land area covered in the Master Plan and include the Site, the Redevelopment Land, the Station Development Land, as described in **Schedule 1** (*Project Details*) attached hereto;
- 1.1.112 **“Project Management Consultant”** or **“PMC”** shall mean such person(s) agency(s) and/or employee(s) of Authority, as may be nominated by Authority to act as the project management consultant in relation to the Project and to discharge the functions set forth in the Agreement;

- 1.1.113 **“Project Manager”** shall mean an experienced and competent engineer nominated by the Developer as the Project Manager for supervision of the Project;
- 1.1.114 **“Project Revenue”** shall refer to and mean all the monies (gross) received by the Developer, excluding service tax and sales tax, pursuant or incidental to – (a) the Sub-Lease of proposed space in Commercial Development Assets and Commercial Development Project Utilities in the Commercial Development Project; and (b) exploitation in any permitted manner of the Site, Commercial Development Assets and Commercial Development Project Utilities in the Commercial Development Project by any person, whether at the instance of the Developer or the End User, including but not limited to capital receipts, upfront Sub-Lease payments, deposits, advances, registration payments, instalments received from End Users, Sub-Lease charges, and shall also include the revenue earned pursuant to the services provided or to be provided by the Developer to the End Users or any person exploiting in any manner whatsoever the Commercial Development Assets and Commercial Development Project Utilities in the Commercial Development Project such as parking of vehicles, display, signage, play area, events, road shows, promotional activity, hoardings, kiosks, advertisements and counters. For avoidance of doubt Project Revenue shall exclude any Station Revenue received under the Station Facility Management Agreement and any revenue received from Railway Operational Activities;
- 1.1.115 **“Project Schedule”** shall mean and include the schedule, key dates and milestones for the completion of the various constituents and components of each of the Commercial Development Project, the Redevelopment Project and the Station Development Project as specified in greater detail in the Schedules;
- 1.1.116 **“Project Utilities”** shall mean all services, amenities and utilities, such as and amenities such as water supply, sewerage, storm water drainage, generator, electricity supply, lighting, air conditioning, landscaping, fountains, open parking, exhibition ground etc. which the Developer is required to construct and maintain on the Site, the Redevelopment Land and Station Development Land and **“Commercial Development Project Utilities”**, **“Redevelopment Project Utilities”** and **“Station Development Project Utilities”**, shall be construed accordingly;
- 1.1.117 **“Provisional Completion Clearance”** shall mean the provisional Completion Clearance issued by the Nodal Officer in accordance with the provisions of the Agreement, in respect of the provisional completion of any component of the Project;
- 1.1.118 **“Provisional Sum Items”** shall mean those items of works for the Mandatory Project, the costs of which as per actuals incurred by the Developer, shall be borne by Authority only to the extent as set forth in the Agreement, and the indicative cost of which are set forth in the Schedule;

- 1.1.119 “**Railway**” shall mean the ‘Railway’ as defined in the Railways Act, 1989 and shall also include “**Railway Administration**”, where the context so demands;
- 1.1.120 “**Rail Display Network Area**” shall have the meaning as defined in the Station Facility Management Agreement.
- 1.1.121 “**Railway Administration**” shall mean the ‘Railway Administration’ as defined in the Railways Act, 1989;
- 1.1.122 “**Railway Development Project**” shall mean all works towards the railway train operational infrastructure at the Station, such as yard, tracks, overhead electrical traction equipment (OHE), signalling systems, telecommunication and other works required for actual operation of the railway system at the Station, as set forth in the **Schedule 13A** (*Railway Development Project*), which shall be the excluded from the scope of the Project;
- 1.1.123 “**Railway Operational Activities**” shall have the meaning ascribed to the term in **Schedule 13B** (*Railway Operational Activities*), which shall be the excluded from the scope of the Project;
- 1.1.124 “**Receivables**” shall mean any and all cash flows and cash realizations and other receivables of the Developer, whether accruing from or in relation to the Project, or from any source, including all proceeds from any draw-downs under its loan agreements, any equity funding received by the Developer, refund of taxes, any and all monies due or to become due to the Developer from any source including from any performance bonds, letters of credit and instruments of a similar nature, proceeds of marketing of the Built Up Area within Commercial Development Assets, and proceeds from any insurance contracts. For avoidance of doubt Receivables shall exclude any Station Revenue received under the Station Facility Management Agreement and any revenue received from Railway Operational Activities;
- 1.1.125 “**Redevelopment**” or “**Redevelopment Project**” shall mean the development of new Assets and Project Utilities required to be undertaken by the Developer at the Redevelopment Land, including Assets and Project Utilities for the relocation of existing railway colony/ staff quarters, service buildings, and other amenities that exist at the Site and the Reserved Railway Land, but are required to be relocated to the Redevelopment Land in order to vacate the Site and the Reserved Land and the construction of such other Assets and Project Utilities at the Redevelopment Land, as may be specified in the Schedules;
- 1.1.126 “**Redevelopment Project Facilities**” shall mean the project facilities to be provided by the Developer as a part of the Redevelopment Project, as specifically enumerated in the Schedule;

- 1.1.127 **“Redevelopment Land”** shall mean the land on which the Redevelopment Project is to be carried out and Redevelopment Assets and Redevelopment Project Utilities are to be constructed, and such other land or places forming part of the Redevelopment Land, as may be specified in the Schedules;
- 1.1.128 **“Reserved Railway Land”** shall mean the Railway land which will be made available by the Authority to the Developer for undertaking the Commercial Development Project and as specified in the Schedule;
- 1.1.129 **“Schedule of Payment”** shall mean the payment schedule as provided in the Agreement;
- 1.1.130 **“Security Deposit”** shall mean the deposit required to be submitted by the Developer with Authority as security against any default in timely payment of Lease Premium or Annual Lease Rent or breach of any other obligation during the Term;
- 1.1.131 **“Site”** shall mean the Reserved Railway Land and/or the air space above and/or around existing Railway building/ station/ track/ proposed Station Development Project or Redevelopment Project (as the case may be), including circulating areas, over which the Authority has permitted the Developer to undertake the Commercial Development Project, as specified and marked in the Master Plan;
- 1.1.132 **“Special Conditions of Development Agreement”** or **“SCDA”** shall mean the Special Conditions of the Development Agreement forming part of the Agreement;
- 1.1.133 **“Specifications”** shall mean the DPR and other specifications for the Project, and the works and materials of the Project, as set forth in the Schedules;
- 1.1.134 **“Station”** shall have the meaning as ascribed to it in Recital A herein;
- 1.1.135 **“Station Development Land”** shall mean the land on which the Station Development Project is to be carried out, as set forth in the Schedules;
- 1.1.136 **“Station Development Project”** shall mean the development, construction and/ or re-development and/ or modernization of the existing or proposed Station (including station buildings, platforms, passenger areas, concourse areas and waiting areas), service buildings, passenger amenities and other utilities and amenities over the Station Development Land to be mandatorily carried out by the Developer in the terms of the Agreement;
- 1.1.137 **“Station Development Project Facilities”** shall mean the project facilities to be provided by the Developer as a part of the Station Development Project, as specifically enumerated in the Schedules;
- 1.1.138 **“Station Facility Management”** shall mean the maintenance and management of the Assets, Project Utilities comprised in the Station Development Project, in accordance with the requirements of the Station Facility Management Agreement;

- 1.1.139 “**Station Facility Management Agreement**” or “**SFMA**” shall mean the agreement to be entered into between the Parties substantially in the form annexed hereto in the Schedules for the purposes of undertaking the Station Facility Management;
- 1.1.140 “**Station Facility Manager**” shall mean the person undertaking the Station Facility Management, pursuant to the Station Facility Management Agreement;
- 1.1.141 “**Station Revenues**” shall have the meaning as assigned to it in the Station Facility Management Agreement;
- 1.1.142 “**Sub-Contractors**” shall mean the person or persons, as the case may be, with whom the Developer has entered into any contract or agreement including but not limited to any designing, engineering, procurement, construction, operation, maintenance and / or management of the Project, Assets and Project Utilities or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance, and the term “Sub-Contract” shall be interpreted accordingly;
- 1.1.143 “**Sub-Lease**” shall mean the sub-leasing / sub-licensing any space in the Commercial Development Assets in the Commercial Development Project, by the Developer to an End User, which shall include a license to use the Commercial Development Project Utilities;
- 1.1.144 “**Sub-Lease Deed**” shall mean the agreement executed by the Developer with any End User for Sub-Lease of any space in the Commercial Development Assets and Project Utilities in the Commercial Development Project inter-alia for earning Project Revenues;
- 1.1.145 “**Sub-License**” shall mean the sub-licensing of any space in the Station Development Assets and Project Utilities in the Station Development Project, by the Station Facility Manager to any licensee, in accordance with the Station Facility Management Agreement;
- 1.1.146 “**Subordinated Debt**” shall refer to mean the funds advanced by any of the shareholders of the Developer for meeting the Project Cost. Provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the shareholders of the Developer, it shall for the purposes of the Agreement be deemed to be Subordinated Debt (and not Equity) even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;
- 1.1.147 “**Substitution Agreement**” shall mean the substitution agreement, substantially in the form set forth in the Schedules as entered into/ proposed to be entered into between the Authority, Developer, and the Lenders in relation to the substitution of the Developer with the Nominated Company in accordance with the Agreement;
- 1.1.148 “**Substitution Premium**” shall mean the lump sum amount, to be paid upfront to Authority, offered as financial bid by the party selected as the Nominated Company

through a competitive bidding process, conducted as part of the Substitution, for substituting the Developer and as per the Agreement;

- 1.1.149 “**Taxes**” shall mean all applicable taxes by whatever name called (including but not limited to service tax, goods and service tax etc. and any fresh taxes), duties, levies, fees, cess etc., whether levied at present or in future, but does not include income tax payable by the Party concerned;
- 1.1.150 “**Technical Capacity**” shall have the meaning ascribed to the term in the Bid Document;
- 1.1.151 “**Term**” shall mean the duration beginning from the Effective Date up to the Expiry Date;
- 1.1.152 “**Term of SFMA**” shall have the meaning as ascribed to it in the Station Facility Management Agreement;
- 1.1.153 “**Termination Notice**” shall mean the notice issued by either Party to the other Party in accordance with the provisions of the Agreement terminating the Agreement;
- 1.1.154 “**Termination Payment**” shall mean the amount that may be payable under and in accordance with the Agreement by Authority to the Developer, as applicable, in respect of the termination of the Agreement;
- 1.1.155 “**Tests**” shall mean the test to determine the completion of the Mandatory Project, in accordance with the terms of the Agreement, as set forth in the Schedules;
- 1.1.156 “**Total Project Cost**” shall mean the total project cost to be incurred by the Developer in respect of development, implementation and completion the Commercial Development Project, Redevelopment Project and Station Development Project;
- 1.1.157 “**Transfer Date**” shall mean the date on which the Developer transfers possession of the Assets and Project Utilities in the Project (to the extent not handed over prior thereto), to Authority or its nominee in terms of vesting provisions mentioned in the Agreement, consequent to an expiry or termination of the Agreement and which shall be the date of termination as per the relevant Termination Notice issued by Authority or the Developer, as the case may be or the date of expiry of the Agreement;
- 1.1.158 “**Vesting Certificate**” shall mean a certificate substantially in the form set forth in **Schedule 35** (*Vesting Certificate*); and
- 1.1.159 “**Year**” shall mean one year of the Gregorian calendar.

1.2 Interpretations

- 1.2.1 Unless the context otherwise requires, in the GCDA:
- 1.2.2 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;

- 1.2.3 the table of contents, headings or sub-headings are for convenience of reference only and shall not be used in, and shall not affect, the interpretation or construction of this GCDA;
- 1.2.4 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;
- 1.2.5 any approval, consent, permit, or NOC, required to be obtained under or pursuant to the Agreement, shall, unless specifically agreed to by the Parties, be required to be obtained in writing;
- 1.2.6 references to “development” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up gradation and other activities incidental thereto, and “develop” shall be construed accordingly;
- 1.2.7 any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- 1.2.8 a reference to ‘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 a separate legal personality) of two or more of the above and shall include successors and assigns;
- 1.2.9 a reference to any statutory body or authority includes a reference to any successor as to such of its functions as are relevant in the context in which the statutory body or authority was referred to;
- 1.2.10 a reference to any document, agreement, deed or other instrument (including, without limitation, references to this GCDA) means a reference to such document, agreement, deed or other instrument and to all annexures and parts attached or relatable thereto, all of which shall form an integral part of such document, agreement, deed or other instrument, as the case may be;
- 1.2.11 Any reference to articles, clauses or sections, shall unless repugnant to context, mean a reference to the relevant articles, clauses or sections of the GCDA;
- 1.2.12 any reference to day shall mean a reference to a calendar day;

- 1.2.13 references to a “business day” shall be construed as references to a day (other than a Sunday) on which banks are generally open for business in the State in which the Station is located;
- 1.2.14 any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- 1.2.15 references to a “NOC” or “no-objection certificate” shall mean the grant of the relevant approval/ no-objection/ no-objection certificate;
- 1.2.16 references to any date, period, Key Date or milestone shall mean and include the prescribed date, period, Key Date, or milestone or such date, period, Key Date or milestone as may be extended pursuant to the Agreement;
- 1.2.17 in the event any date, period, Key Date or Milestone falls on a Saturday, Sunday or day which is a public holiday for the Authority, then the immediately succeeding working day for the Authority shall be treated as the relevant due date, period, Key Date or Milestone, as the case may be;
- 1.2.18 the Agreement shall be signed in duplicate by Authority and the Developer. These two copies shall be treated as complementary and what is called for by anyone shall be as binding as if called for by all. The original Agreement shall remain in the custody of the Authority till such time it is presented for registration by the Developer at the relevant sub-Registrar’s office. Once the Agreement is duly registered by the Developer, the original duly registered Agreement shall be retained by the Authority and handed over to the Developer once the Developer provides to the Authority a certified true copy of such duly registered Agreement;
- 1.2.19 materials or works described in words which so applied have a well known technical or trade meaning shall be held to refer to such recognized standards;
- 1.2.20 words importing the singular number shall also include the plural and vice versa where the context requires;
- 1.2.21 capitalized Terms utilized herein, but not defined shall have the meaning set forth in the Bid Documents;

- 1.2.22 unless the context otherwise require, any period of time referred to shall be deemed to expire on the last day of such period;
- 1.2.23 if any provisions in this Article 1 is a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to it as if it were a substantive provision in the main body of the Agreement;
- 1.2.24 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.





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:

- 2.1.1 Design, construction and procurement of the Station Development Project on the Station Development Land set forth in **Schedule 1A** (*Station Development Land*) and as specified in **Schedule 2A** (*Scope of Station Development Project*), together with facilities as specified in **Schedule 8A** (*Station Development Project Facilities*) and Project Utilities as specified in **Schedule 10** (*Project Utility Requirements*), and in conformity with the specifications and standards set forth in **Schedule 9A** (*Standards and Specifications for Railway Stations*) and **Schedule 5** (*Station Functional Requirements*);
- 2.1.2 Design, construction, and procurement of the Redevelopment Project on the Redevelopment Land, set forth in **Schedule 1B** (*Redevelopment Land*) and as specified in **Schedule 2B** (*Scope of Redevelopment Project*), together with facilities as specified in **Schedule 8B** (*Redevelopment Project Facilities*) and Project Utilities as specified in **Schedule 10** (*Project Utility Requirements*), and in conformity with the specifications and standards set forth in **Schedule 9B** (*Standards and Specifications for Redevelopment Project*);
- 2.1.3 The maintenance and management of the Asset and Project Utilities comprised in the Station Development Project, during and post construction for the Term of SFMA, in accordance with and subject to the requirements of the Station Facility Management Agreement.
- 2.1.4 The design, construction, procurement, operation and maintenance of the Assets and Project Utilities comprised in the Commercial Development Project, on the Site set forth in **Schedule 1C** (*Site Land*) and as specified in **Schedule 2C** (*Scope of Commercial Development Project*), together with Project Utilities as specified in **Schedule 10** (*Project Utility Requirements*).
- 2.1.5 Undertaking of the dismantling of existing structures including religious structures and clearance of the land comprised in the Reserved Railway Land

and Commercial Development Land at its own cost, and also keeping it free and clear of all temporary works, Developer's equipment, construction debris, rubble and other plant, equipment and material not forming a part of the Project (save and except to the extent specifically permitted by the Authority), and securing the Reserved Railway Land with a steel hoardings/brick or masonry boundary wall on all sides of height as per Applicable Laws (but not less than 1.8 meters) with access controlled gates (as approved by the Authority) at its own costs and expenses.

2.2 Exclusions from the Scope of the Project

- 2.2.1 It is clarified that the Scope of the Project, does not include any works towards the Railway Development Project as further enumerated in **Schedule 13A** (*Railway Development Project*) and Railway Operational Activities as further enumerated in **Schedule 13B** (*Railway Operational Activities*).
- 2.2.2 The Railway Development Project (if any) and Railway Operational Activities shall be undertaken by the Railways either directly or through its nominated agencies. The Project shall be undertaken in a manner so as to not interfere with the implementation of the Railway Development Project and/or Railway Operational Activities.

ARTICLE 3: GRANT OF RIGHTS

3.1 Grant of Station Development and Facility Management Rights.

3.1.1 Subject to and in accordance with the provisions of the Agreement, the Station Facility Management Agreement, the Applicable Laws and the Applicable Permits, Authority hereby grants to the Developer (a) exclusive right, license and authority to design, finance and develop or redevelop, construct, modernize and equip the Station as set forth herein as Station Development Project (the “**Station Development Rights**”); and (b) the right to maintain and manage the Station Development Assets and Station Development Project Utilities so developed, and to collect and appropriate the Station Revenues (the “**Station Facility Management Rights**”) for the Term of SFMA, and the Developer hereby accepts the grant and undertakes to implement the Station Development Project subject to and in accordance with the terms and conditions set forth herein and the Station Facility Management Agreement.

3.1.2 Subject to and in accordance with the provisions of the Agreement, the Station Development Rights hereby granted shall oblige or entitle (as the case may be) the Developer to the following:

- (a) right of way and/ or access (as the case may be) to the Project Land in the manner, for the purposes and to the extent conferred by the provisions of the Agreement. Provided that it is clarified that the right of way and/ or access to the Redevelopment Land and the Station Development Land, shall be granted to the Developer solely for the purposes of undertaking the Redevelopment Project and/ or the Station Development Project, and the Developer shall have no ownership or leasehold rights in respect of such Redevelopment Land or the Station Development Land or improvements thereof. The performance of obligations by the Developer after the Construction Period shall be based on separate right of way provided by the Authority in writing;
- (b) to enter into sub-contracts for the purposes of the Station Development Project, subject to the terms of the Agreement;
- (c) obligation to apply for and obtain all Applicable Permits (in the name of the Developer and/ or Authority, as applicable), as required for the Station Development Project;
- (d) to design, engineer, finance, procure, contract and erect the Station

Development Assets and Project Utilities comprised in the Station Development Project on the Station Development Land, in accordance with the terms hereof, including without limitation, the DPR and other Specifications, and for that purpose to remove, renovate, relocate, use or demolish any structures with prior approval of Authority that may be existing on the Station Development Land as on the date of handing over of the relevant part of the Station Development Land to the Developer;

- (e) to facilitate the development of the Station Development Project, obtain in its own name loans or raise funds from any Lender (subject to the provisions hereof including Article 8.2.2 and after at-least 7 (seven) days prior intimation to Authority), and as security for the same to create Encumbrances on the Assets comprised in the Commercial Development Project, to the extent and as specifically permitted under the Agreement. Provided that the Project Land, or the Assets, and Project Utilities comprised in the Station Development Project and the Redevelopment Project are not to be encumbered in any manner whatsoever;
- (f) to undertake the Commercial Development of the air space above existing Railway building/ station/ track or proposed Station Development Project or Redevelopment Project, in accordance with the provisions of Article 3.2;⁹

3.2 Grants of Lease Rights for Commercial Development

3.2.1 The Developer shall be entitled to the Lease Rights on the Commercial Development Assets only on fulfilment by it of all the Conditions Precedent in terms of Article 4 hereof till expiry of Lease Tenure. The Lease Rights shall (subject to the compliance with the terms of the Agreement) entitle the Developer to the following amongst other rights, till expiry of Lease Tenure:-

- (a) right of way and/ or access (as the case may be) to the Site in the manner, for the purposes of and to the extent conferred by the provisions of the Agreement, and Right to enjoy the Lease Rights of the Commercial Development Assets for the purpose of developing

⁹ Note: Retain as applicable

- and undertaking the Commercial Development Project;
- (b) to design, engineer, finance, procure, construct, erect, operate and maintain the Assets, Project Utilities comprised in the Commercial Development Project and the Interfacing Structures and Areas, in accordance with the terms hereof, and for that purpose to remove, renovate, relocate, use or demolish any structures with prior approval of Authority that may be existing on the Site as on the date of handing over of the relevant part of the Site to the Developer;
 - (c) to appoint the Sub-Contractors for the purposes set forth in (b) above; Notwithstanding any such Sub-Contract, the Developer shall have at all times and shall retain the overall responsibility, obligation and liability in relation to the Project. It is clarified that the Developer shall remain liable and responsible for any acts, omissions or defaults of any Sub-Contractor for construction or any of the End Users for use of spaces inside Commercial Development Assets and shall indemnify Authority in respect thereof.
 - (d) marketing rights over the Built Up Area within the Commercial Development Assets, subject to the approval of the Commercial Development Plan and subject to the provisions of the Agreement, the right to Sub-Lease of the Built Up Area within the Commercial Development Assets, to third parties, subject to and as per terms herein;
 - (e) right to undertake and permit commercial use of the Built Up Area within the Commercial Development Assets, provided the Completion Clearance or Provisional Completion Clearance, as the case may be has been issued by the Nodal Officer / Authority, in respect of the Commercial Development Project;
 - (f) to grant user rights, sub-lease and sub-license rights to any End Users over the Built Up Area within the Commercial Development Assets through the execution of Sub-Lease Deeds and sub-license agreements respectively, provided (i) the Completion Clearance or Provisional Completion Clearance, as the case may be, has been issued by the Nodal Officer / Authority in respect of the Commercial Development Project, (ii) applicable Lease Premium has been paid in

proportion to the cumulative Built Up Area within the Commercial Development Assets being Sub-Leased, and (iii) the Completion Certificate in respect of the Commercial Development Project is obtained as per Applicable Laws;

- (g) to demand, collect and appropriate charges as Project Revenues in consideration of the grant of sub-lease/ sub-license/ usage right in respect of the Built Up Area in the Commercial Development Assets;
- (h) to undertake / permit fit-out works in the Built Up Area within the Commercial Development Assets upon completion of the bare shell structure, provided the permission has been issued by the Nodal Officer / Authority, in respect of the relevant component of the Commercial Development Project.

3.3 Development rights prior to getting right of way to the Project Land

3.3.1 Without prejudice to the foregoing provisions of this Article 3, immediately after the execution of the Agreement, and even prior to the satisfaction of the Conditions Precedent, and obtaining the right of way to the Project Land the Developer shall get only the following development rights on the Project Land for:

- (a) planning and designing the Project;
- (b) raising finances through equity and debt;
- (c) subject to Article 8.2.2, creating Encumbrances on its development rights on the Commercial Development Assets for arranging debt; and
- (d) appointing Sub-Contractors for carrying out detailed designing and construction of the Project.

3.4 Grant subject to obligation

3.4.1 It is clarified that the rights granted in respect of the Station Development Project and Commercial Development Project under this Article 3 to the Developer are subject to the conditions attached to exercise of such rights and performance of its obligations as set out in the Agreement and other documents executed pursuant to the Agreement.

ARTICLE 4: CONDITIONS PRECEDENT

4.1 Effectiveness

4.1.1 Save and except as expressly provided in Article 1, Article 2.2, Article 3.3, Article 4, Article 7, Article 9, Article 10, Article 13, Article 29, Article 30, Article 33, Article 35, Article 38, Article 40, Article 41, Article 42, Article 43, Article 44, Article 45, Article 46, Article 48, Article 49, the respective rights and obligations of the Parties under the Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Article 4.

4.2 Conditions Precedent of Authority

4.2.1 Conditions Precedent required to be satisfied by Authority prior to the Appointed Date shall be deemed to be fulfilled when:

- (a) Authority shall have arranged for the Developer the right of way to the Project Land or part thereof as the case maybe relating to and for the first of the phases of the Project Land as per the **Schedule 22** (*Handover Protocol*). Provided that the right of way in respect of the Project Land shall be undertaken in accordance with Article 11, and **Schedule 22** (*Handover Protocol*). Provided further that the Authority shall be required to handover the right of way to the Project Land to the Developer as per provisions of the Agreement only when the Conditions Precedent required to be satisfied by the Developer have been duly fulfilled.
- (b) Authority shall have procured no-objections and/ or in-principle approval from the relevant Government Authority for the Project as required to be obtained by Authority in accordance with the **Schedule 29 B** (*Approvals to be obtained by Authority*).
- (c) Authority shall have procured necessary approval, in respect of components of the Master Plan that would enable the Developer to construct structures on, over or under a railway line in accordance with the Specifications and subject to the terms and conditions hereof.
- (d) Additional Conditions Precedent: The obligations of the Developer in respect of the Commercial Development Project, the Redevelopment Project and the Station Development Project shall be subject to the

satisfaction by Authority of each of the Conditions Precedent, if any, set forth in the SCDA.

4.3 Conditions Precedent of the Developer

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

(a) Execution of agreements:

- (i) The Developer shall have executed and delivered to Authority copy of the Escrow Agreement if required under the SCDA;
- (ii) The Developer shall have delivered to Authority, a copy of the shareholders' agreement, between the shareholders of the Developer, duly executed by each of the parties thereto;
- (iii) The Developer shall have executed and delivered to Authority copy of the Station Facility Management Agreement;

(b) Financial Close:

- (i) The Developer shall have achieved the Financial Close and submitted, 2 (two) true copies each of the Financing Agreement(s), the Financial Package and the Financial Model, duly attested by a director of the Developer, along with 2 (two) soft copies of the Financial Model in Microsoft Excel version or any substitute thereof, which is acceptable to the Lenders.

(c) Legal Opinion:

- (i) The Developer shall have delivered to Authority a legal opinion from the legal counsel of the Developer with respect to the legal capacity of the Developer to enter into the Agreement and the enforceability of the provisions thereof.

(d) Applicable Permits:

- (i) The Developer shall have obtained all Applicable Permits

specified in **Schedule 29A** (*Applicable Permits to be obtained by the Developer*), unconditionally, or if subject to conditions, then all such conditions required to be fulfilled prior to or by the Appointed Date shall have been satisfied in full, and such Applicable Permits are in full force and effect.

(e) **Confirmation:**

- (i) The Developer shall have delivered to Authority a confirmation from each of the [consortium members, Affiliates] in original, of the correctness of their representations and warranties set forth in Articles 7.1.1(n), 7.1.1(o), 7.1.1(p) of the Agreement.

(f) **Additional Conditions Precedent**

- (i) The Commercial Development Project, the Redevelopment Project and the Station Development Project shall be further subject to the due satisfaction of each of the Conditions Precedent set forth in the SCDA.

(g) **Conditions Precedent under the Station Facility Management Agreement.**

- (i) The conditions precedent required to be fulfilled by the Developer under the Station Facility Management Agreement shall have been fulfilled by the Developer.

Provided that upon request in writing by the Developer, Authority may in its discretion, waive or extend the date of compliance of any of the Conditions Precedent set forth above.

4.4 Period for satisfaction of the Conditions Precedent

4.4.1 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated herein and 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.

4.4.2 The Developer shall notify Authority in writing at least once a month and if required by the Authority, on a weekly basis, on the progress made in satisfying the Conditions Precedent of the Developer. The Developer shall promptly inform Authority as and when any Conditions Precedent for which the Developer is responsible has been satisfied.

4.5 Damages for delay by Authority in fulfilment of Conditions Precedent

4.5.1 In the event that Authority does not procure the fulfilment of any or all of the Conditions Precedent set forth in Article 4.2 above, on or prior to the Appointed Date, and the delay has not occurred as a result of breach of the Agreement by the Developer, or due to an event of Force Majeure, subject to the Developer having duly satisfied all of the Conditions Precedent under Article 4.3 above, then the End Date shall be extended by period equivalent to the number of days of delay from the Appointed Date in fulfilling of such Conditions Precedent by the Authority.

4.6 Damages for delay by Developer in fulfilment of Conditions Precedent

4.6.1 In the event that the Developer does not procure the fulfilment of any or all of the Conditions Precedent in Article 4.3 above, prior the Appointed Date, and the delay has not occurred on account of a Force Majeure Event, then the Developer shall pay, forthwith, to Authority liquidated damages of an amount calculated at the rate of 0.3% (zero point three percent) of the cumulative amounts of the Performance Guarantee for Project, Performance Guarantee for Mandatory Project and SFMA Performance Guarantee, for each day's delay, until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the cumulative amount of such Performance Guarantees and upon reaching such limit the Authority shall, in its sole discretion, be entitled to terminate the Agreement.

4.7 Genuine Pre-estimate

4.7.1 The Parties agree and acknowledge that the extension of time and amounts specified in Articles 4.5, Article 4.6 and 4.8, constitute a genuine pre-estimate of the loss and damage occurring to the non-defaulting Party, on account of a

delay and/ or default of the defaulting Party in duly satisfying the Conditions Precedent, and are not by way of penalty.

4.8 Termination at Long Stop Date

4.8.1 Without prejudice to the provisions of Article 4.5 and 4.6 above and subject to Article 9, in the event the Conditions Precedent as specified hereinabove are not fulfilled by either Party, for any reason whatsoever on or prior to the expiry of 200 (Two Hundred) days from the Appointed Date, then unless waived by the non-defaulting Party, the Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

4.8.2 In the event of termination of Agreement is due to non fulfillment of Conditions Precedent of Authority, then all payments made by the Developer towards the Lease Premium and/ or the Annual Lease Rent, if any shall be returned by Authority to the Developer, with simple interest @ 8% (eight percent) per annum calculated from the date of receipt of respective payments by the Authority. In the event the termination of Agreement is due to non fulfillment of Conditions Precedent of Developer, the Performance Guarantees and Security Deposit, shall be encashed and appropriated by the Authority as liquidated damages thereof.

ARTICLE 5: GENERAL OBLIGATIONS OF THE DEVELOPER IN RELATION TO THE PROJECT

5.1 Authorised Representative, Project Manager and Project Land Organisation

5.1.1 The Developer shall, within 30 (thirty) days of the Effective Date, nominate its Authorised Representative and shall authorise him for all correspondence, communication, signing of documents, participation in meetings etc. with Authority in respect of the Project and issues relating to or arising out of the Agreement.

5.1.2 The Developer shall, prior to the Appointed Date, nominate a Project Manager, who shall supervise and be overall in-charge of all construction activities being undertaken by the Developer at the Project Land during the Construction Period. Provided that where so approved by Authority the Developer may nominate separate Project Managers for the Commercial Development Project, the Station Development Project and the Redevelopment Project, each of whom shall be deemed to be the relevant Project Manager in respect of that component of the Project.

5.1.3 The Project Manager shall be the Project site representative of the Developer for interaction with the authorised representatives of Authority visiting the Project Land or dealing with the Project during the Construction Period. In case the Project Manager is not available, he shall ensure that its authorised agent is available for the Project, who shall, present himself to the Nodal Officer, the PMC or their representatives and orders given by the Nodal Officer, PMC or their representatives to the authorised agent of the Project Manager shall be deemed to have the same force as if they had been given to the Project Manager.

5.1.4 The Developer shall have a competent team of engineers, technical staff, managers, etc. so as to complete the Project satisfactorily as per the requirements of the Agreement. A control room, with round the clock radio communication or telephone switchboard link with all safety offices worksites, site offices, batching plants, casting yards, fabrication yards, off-site offices, PMC's offices, Authority's offices, testing laboratories, shall be

maintained and manned round the clock. Residences of all senior team members shall also be connected to the control room. Stand-by vehicles for emergency use should be at stand-by, should be available at the control room, round the clock. Designation of various team members of the Developer's organisation, shall be required to be approved by the PMC, before adoption, so as to avoid any duplication of the designation with those of Authority or the PMC.

5.1.5 The Developer shall provide all necessary superintendence during the design and execution of the Project and as long thereafter as the PMC may consider necessary for the proper fulfilment of the Developer's obligation under the Agreement. Such superintendence shall be provided by sufficient persons having adequate knowledge of the operations to be carried out, for the satisfactory and safe execution of the Project. The PMC may require the Developer to remove (or cause to be removed) any person employed on the Project Land, including the Developer's Authorised Representative, who in the opinion of the PMC:

- (a) Persists in any misconduct;
- (b) Is incompetent or negligent in the performance of its duties;
- (c) Repeatedly fails or wilfully defaults in conforming with any provisions of the Agreement;
- (d) Persists in any conduct which is prejudicial to safety, health, or protection of the environment.

5.1.6 If appropriate, the Developer shall appoint (or cause to be appointed) a suitable replacement for such person, to be approved by the PMC.

5.1.7 The Developer shall at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct, by or amongst, his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Project, against such conduct. The Developer and his Sub-Contractors shall disclose a list of all their employees and workmen, who are involved in the Project, to the PMC. The Developer shall ensure

that under no circumstances, the employees and workmen of the Developer or any Sub-Contractor, are otherwise deemed to be employees of Authority.

5.2 Obligation with respect to Taxes, duties from date of vesting

5.2.1 The Developer shall, with effect from the Appointed Date, pay all outgoings, cess, Taxes (including municipal taxes), levies, import duties, fees (including any license fees) rates and other user charges (including those applicable for existing utility connections and any other dues, assessments or outgoings payable in respect of implementation of the Project (including new utility connections obtained by it, if any) or in respect of the materials stored therein which may be levied by any Government Authority. The Developer shall, with effect from the Appointed Date, also pay all outgoings, cess, Taxes (including municipal taxes), rates and other user charges whatsoever and all increases thereto, in respect of the Project Land and the Assets of the Project, in each case till such time as the same are not handed over to Authority or its nominee in accordance with the terms hereof.

5.3 Safety, Health & Environment Obligations

5.3.1 The Developer shall undertake the Project during the Term with due regard to safety precautions, fire protection, security, transportation, delivery of goods, materials, control of pollution, maintenance of competent personnel and labour and industrial relations.

5.3.2 The Developer shall provide sufficient sanitary arrangements for the labour, workmen and other staff employed for the Project in order to keep the Project Land and the surroundings clean and in good condition to the satisfaction of the Authority and shall not, without the previous consent in writing of the Authority, permit any labour or workmen to reside upon the Project Land and in the event of such consent being given, shall comply strictly with the terms thereof.

5.3.3 The Developer shall develop the Project in accordance with the pollution control criteria set forth in the Applicable Laws and in accordance with

terms and conditions contained in various Applicable Permits. The Developer shall take all precautions to avoid pollution or contamination of the air, land or water arising out of the implementation of the Project (whether at the Project Land or elsewhere).

5.3.4 The Developer agrees that works in relation to the Project (including specifically the Mandatory Project) may require to be carried out close to the running tracks and public utilities. Therefore, safety of running trains and the public is paramount. The Developer accordingly agrees that all activities undertaken by the Developer or any of its Sub-Contractors shall ensure safety at all times. The Developer shall comply with the instructions issued by the Authority from time to time to ensure safe running of trains while carrying out works. The Developer shall not be entitled to any additional consideration in connection with compliance with the same.

5.3.5 Without prejudice to the foregoing, the Developer shall at all times comply with the requirements and conditions set forth in **Schedule 9** (*Standards and Specifications*) and **Schedule 24** (*Project Work, Safety and Access Requirements*), and the other provisions of the Agreement including specifically Article 24.

5.4 **Connections & Utilities for the Project**

5.4.1 Connections and utilities for the Construction Period: The Developer shall be solely responsible for seeking connections and ensuring the supply of all essential utilities including but not limited to electricity, water, fuel, consumables and any other services necessary or incidental to the implementation of the Project and that all such facilities shall be at the cost and expense of the Developer. In particular, the Developer shall be solely responsible to procure, at its own cost and expense, all water, electricity and all other utilities required for the construction of the Assets for the Project. Authority shall facilitate, through the relevant Railway, on request of the Developer, the provision of any infrastructural facilities or services in relation to any such utilities, subject to availability with Railway, and payment of appropriate charges. Railway may provide suitable access from

surrounding railway land for bringing these utilities to the Project Land without any way and leave charges.

5.4.2 The Developer shall, from time to time, pay all the charges/bills for the usage of all utilities and infrastructure facilities provided to them by the relevant Government Authority.

5.4.3 The Developer shall take all measures, including applying for any and all connections from suitable Government Authorities to provide all the utilities and infrastructure facilities (including through the Project Utilities) required for the Project. Further, the Developer shall undertake all measures required to be undertaken for separate metering of all such utilities and Project Utilities utilized by the users of the Project Land or Assets thereon.

5.5 Approvals & Licences for the Project

5.5.1 The Developer shall observe and conform to all Applicable Laws relating to the Project, the Project Land in any way and in particular but not limited to all public and labour related issues including health and sanitation in force for the time being. The Developer shall ensure and shall remain responsible that its Sub-Contractors and End Users shall also adhere with Applicable Laws as required in the Agreement.

5.5.2 The Developer shall at all times, obtain and keep valid all Applicable Permits, which are required by Applicable Law, to undertake the Project.

5.5.3 Without prejudice to the foregoing:

- (a) The Developer and its Sub-Contractors shall be responsible to ensure compliance with the provision of the Minimum Wages Act, 1948 and the Rules made thereunder.
- (b) The Developer and its Sub-Contractors shall be responsible to ensure compliance with the provisions of the Apprentice Act, 1961 and the Rules and orders issued thereunder from time to time in respect of apprentices.

- (c) The Developer and its Sub-Contractors shall comply with the provisions of the Payment of Wages Act, 1936 and the rules thereunder.
- (d) The Developer shall comply with the provision of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules 1971 as modified from time to time, where ever applicable.
- (e) The Developer shall be responsible for the safety of all employees directly or through Sub-Contracts employed by it on the Project and shall report serious accidents to any of them however and wherever occurring on the Project to the Nodal Officer or the Nodal Officer's Representative and shall make every arrangement to render all possible assistance.
- (f) The Developer shall observe and make its Sub-Contractors observe and perform all the provisions of the Mines Act, 1952 or any statutory modifications or re-enactments thereof for the time being in force and any rule and regulations made thereunder.
- (g) For the purposes of all Applicable Laws, the Developer shall be deemed to be the principal employer of all workers working at the Project. The Developer shall indemnify Indemnified Parties from and against any Liabilities under any of the Acts or Rules thereunder mentioned in this Article or any other Applicable Laws, and in case through order of any Government Authority, Authority or the Railway has to pay any compensation in respect of the Project, Authority shall recover such amount of compensation so paid from the Security Deposit or the Escrow Account or otherwise from the Developer under these conditions.

5.6 Maintenance of Insurances

5.6.1 The Developer shall obtain and maintain in force, on and from the Effective Date and during the Term thereof, all insurance in accordance with the provisions of the Agreement and Good Industry Practice, as required or necessary in respect of the Project and the implementation thereof.

5.7 Protection of the Site; Fencing

5.7.1 After receiving the Lease Rights, to the Commercial Development Assets, the Developer shall ensure that the land remains free from all encroachments during the Lease Tenure. Further, the Developer shall ensure that for the duration commencing from the time when the Station Development Land and the Redevelopment Land is handed over to the Developer by Authority (and/ or its nominee) for the purpose of the Project, and ending at the date on which same are handed back by the Developer to Authority (and/ or its nominee), the Station Development Land and the Redevelopment Land remains free of all encroachments.

5.7.2 Within 15 (fifteen days) of receipt of right of access of the Project Land, the Developer shall secure the Project Land with environment friendly hoarding of height as per Applicable Law, not less than 1.8 meters of steel, on all sides (for outdoor areas), in each case with access controlled gate in the manner approved by the Nodal Officer. The steel hoarding should have a smooth painted surface with a pre-approved design bearing names and logo of the Project, relevant Railway, Authority, and the Developer. No construction debris, equipments, material should be kept outside the enclosed Project Land without specific permission of the Railway Administration. Provided that the hoarding in respect of indoor work areas shall be made from approved materials (as approved by the Nodal Officer), and be provided from floor to ceiling.

5.7.3 The Developer shall not commence any construction and development work upon the Project Land, except securing the Project through

fencing/boundary wall until requisite approval from the Government Authorities, and approval of the relevant works programme from the PMC and approval of the Commercial Development Plan from the Nodal Officer.

5.7.4 Within 15 (fifteen days) of receipt of right of way to the Project Land (or any part thereof), the Developer shall secure the Project Land in accordance with the provision of **Schedule 24** (*Project Work, Safety and Access Requirements*).

5.7.5 No activity related to construction shall block the adjacent roads in the circulating area at any time or hinder passenger or vehicle movement or cause congestion.

5.7.6 During the period of construction, the Developer shall not permit entry of any unauthorised person to the Project Land and further also maintain separate visitors log system(s) to record entry and exit of Persons in / from the Site and Redevelopment Land and to check unauthorized entry to the same.

5.7.7 The Developer shall appropriately cover walkways and passenger access areas so as to protect public/users/persons from debris / falling objects near and around the work site.

5.8 **General Obligation in relation to the Project**

5.8.1 The Developer shall not permit anything to be done on the Project Land which may be unlawful, a nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises in the vicinity.

5.8.2 The Developer shall design and construct all permanent civil structure(s) in the Project for a minimum design life of 70 (seventy) years (the “**Design Life**”).

5.8.3 The Developer shall be responsible for all risk to the work and for trespass and shall make good at his own expense all loss or damage whether to the works themselves or to any other property of Authority, the Railway or any other third party or the lives, persons or property of others from whatsoever cause in connection with the Project despite all reasonable and proper

precautions that may have been taken by the Developer, and in case Authority is called upon to make good any costs, loss or damages, or to pay any compensation (including that payable under the provisions of the Workmens' Compensation Act or any statutory amendments thereof) to any person or persons sustaining damages as aforesaid by reason of any act, or any negligence or omissions on the part of the Developer the amount of any costs or charges including costs and charges in connection with legal proceedings, which the Authority may incur in reference thereto, shall be charged to the Developer. Authority shall have the power and right to pay or to defend or compromise any claim of threatened legal proceedings or in anticipation of legal proceedings being instituted consequent on the action or default of the Developer, to take such steps as may be considered necessary or desirable to ward off or mitigate the effect of such proceedings, charging to Developer, as aforesaid, any sum or sums of money which may be paid and any expenses whether for reinstatement or otherwise which may be incurred and the propriety of any such payment, defence or compromise and the incurring of any such expenses shall not be called in question by the Developer.

- 5.8.4 The Developer shall execute the Station Development Project in 2 (two) phases, the design phase and the construction phase.
- 5.8.5 The design phase shall commence on the Appointed Date, subject to the satisfaction of the Conditions Precedent by both the Parties. The design phase shall include the preparation and submission of Detailed Design and Drawings i.e., the definitive design and the construction reference drawings.
- 5.8.6 The design phase shall be complete upon the issue of the NOC by the PMC in respect of the comprehensive and complete construction reference drawings submission for the whole of the permanent works for the Station Development Project. The detailed requirements for the above are stated in Article 16 and **Schedule 28** (*Design Requirements*).
- 5.8.7 The construction phase for a whole or part of the permanent works of the Station Development Project shall commence immediately upon issue by the PMC of a NOC in respect of the relevant construction reference drawing

submission. However construction shall not be commenced until the original negatives of the appropriate working drawings have been endorsed by the Developer as 'good for construction' and by the PMC's NOC.

- 5.8.8 The Developer shall undertake the Project using due care and diligence in a professional manner, using sound engineering, design and project management principles and supervisory procedures in accordance with Good Industry Practice and for that it shall retain, engage and consult, qualified and experienced professionals and consultants with good credentials and experience in relation to a project similar to the Project, which is the subject matter of the Agreement.
- 5.8.9 The Developer shall be obliged to complete the Project latest by the Guaranteed Date of Project completion and shall obtain Completion Clearance for the entire Project.
- 5.8.10 The Developer shall not make any excavation upon any part of the Project Land nor remove any stone, sand, gravel, clay or earth therefrom except for the purpose of forming foundations of buildings or for the purpose of executing any work pursuant to the terms hereof.
- 5.8.11 The Developer will ensure that all materials, equipment, machinery etc. installed at the Project Land and/or used for the purposes of the Project will be of sound and merchantable quality, that all workmanship shall be in accordance with Good Industry Practices applicable at the time of installation, construction or repair and that each part of the construction will be fit for the purpose for which it is required. Further, all aspects of the Station Development Project, shall be executed in compliance with the Drawings and Specifications provided in Agreement and the Schedules and if not, appropriate specifications and Detailed Design & Drawings for the Mandatory Project shall be prepared by the Developer (and approval / no-objection obtained from the PMC in respect thereof).
- 5.8.12 Upon completion of the activity of construction of the Project, the Developer shall remove promptly from the Project, all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish, rubble and other debris

(including without limitation accident debris) in accordance with the Agreement and shall keep the land in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits.

- 5.8.13 During the execution of Project, unless otherwise specified, the Developer shall at his own cost provide the materials for and execute all shoring, timbering and strutting works as is necessary for the stability and safety of all structures, excavations and works and shall ensure that no damage, injury or loss is caused or likely to be caused to any person or property.
- 5.8.14 Existing roads or water courses shall not be blocked, cut through, altered, diverted or obstructed in any way by the Developer, except with the permission of the Nodal Officer and the other relevant Government Authority(s). All compensations claimed for any unauthorized closure, cutting through, alteration, diversion or obstruction to such roads or water courses by the Developer or his agent or his staff shall be recoverable from the Developer.
- 5.8.15 During progress of work with respect to the Project in any street or thoroughfare, the Developer shall make adequate provision for the passage of traffic, for securing safe access to all premises approached from such street or thoroughfare and for any drainage, water supply or means of lighting which may be interrupted by reasons of the execution of the works and shall erect and maintain lights and other safeguards as prescribed by the Nodal Officer or the Applicable Permits, for the regulation of the traffic and provide watchmen necessary to prevent accidents.
- 5.8.16 The Developer shall be responsible to take all precautions to ensure the safety of the public whether on public or Railway property and shall post such look out men, and undertake such other safety measures, as may be required to comply with regulations appertaining to the Applicable Laws and any instructions of the Nodal Officer.
- 5.8.17 Unless specifically provided in the Specifications, the Developer shall not carry out any works in relation to the Project, between sunset and sunrise without the prior permission of the PMC. In case of any grave emergency or in order to avoid risk to property and life or to prevent damage to utilities or

to restore them, work may be done at night without the prior permission of the PMC, but intimation to this effect should be sent to the PMC immediately. The Developer shall, in such instances, make adequate lighting and safety arrangements for night working. The Developer shall also be responsible for any claim on account of any injury to or loss of life, of any one, arising out of inadequate lighting, safety arrangements or due to any other failure of the Developer.

- 5.8.18 The Developer shall at its own expense provide and maintain sheds, storehouses and yards at such locations and in such numbers as in the opinion of the PMC are necessary for carrying out the Project. The PMC and his representatives shall have the right to access and enter upon the said sheds, storehouses and yards at any time for the purpose of inspecting the stock of materials and plant so kept in hand. Any materials or plant which the PMC may object to shall not be brought upon or used in the Project and shall forthwith be removed from the sheds, storehouses or yards by the Developer.
- 5.8.19 Except for any specific item mentioned in the Schedules, the Developer shall have to make its own arrangements, at its own cost, plant, machinery and equipment required for execution and completion of the Project and all associated works to the satisfaction of Authority. This shall also include all other associated equipment, tools/tackles, spare parts, POL, consumables, stores, manpower as required for the execution of the works.
- 5.8.20 Notwithstanding anything to the contrary specified hereunder, the Developer shall (save and except to the extent specifically approved by Authority), ensure that the Mandatory Project Utilities shall be developed in a manner that the same are (a) capable of operation, maintenance, repair, replacement and use without reference to or utilisation of or involvement of any of the Commercial Development Project Utilities, and (b) independent of and distinct from the Commercial Development Project Utilities.
- 5.8.21 The Developer shall employ suitably trained and qualified labour and manpower at the Project Land and otherwise, as required to ensure that the Project and all associated works are undertaken consistent with the terms of the Specifications, the other terms of the Agreement, Applicable Law and

Good Industry Practice.

5.8.22 The Developer shall employ suitable mechanism such as washing facility of wheels of vehicles entering/leaving the work site to reduce pollution.

5.8.23 In exceptional cases, on the written request of the Developer and, the Authority may, on a case to case basis and after being fully satisfied, permit change in existing standards and/or specifications with equivalent or better standards / specifications. However, in case a better or equivalent standard / specification item is not available or possible, then an item with lower standard / specification in Station Development Project and Redevelopment Project may be permitted by Authority after obtaining approval of General Manager of the Zonal Railway of Station, provided that the Developer submits the difference of cost to the Authority prior to grant of approval of Authority.

5.8.24 Sinking Fund

- (a) The Parties agree that a sinking fund shall be opened as a sub-account of the Escrow Account (“**Sinking Fund**”) in which the Developer shall from time to time set aside and credit amounts as set out / prescribed by the Authority in the SCDA as contribution towards Sinking Fund. The Sinking Fund shall be exclusively used for mid term replacement and upgradation of machines, assets, equipments and fixtures installed as part of Station Development Project Utilities including but not limited to lifts, elevators, escalators, power-back / DG up sets, HVAC, electric sub-stations, pumps, fire fighting, plumbing, fittings and water supply systems, internal and external electrical fittings and controls, any other plant/equipment of capital nature etc.
- (b) The Developer shall conduct periodic audit to ascertain the necessity for replacement / up gradation of such machines, assets, equipments and fixtures etc., and prepare and submit a report to the Authority in this regard. The Authority shall have the right to decide and determine the necessity of such replacement / up gradation including its timings or cost thereof, in addition to replacement / up gradations of machines, assets, equipments and fixtures etc. independently assessed / suggested by the Authority, and the manner of utilisation of the Sinking Fund etc. and the Developer agrees to abide by the same.
- (c) The Developer shall build up the Sinking Fund in such a manner so as to ensure that the Sinking Fund has amounts equivalent to a prescribed percentage 5% (Five percent) of the Estimated Cost of Station Development Project (“**Sinking Fund Amount**”) standing to its credit on or before expiry of 5th year from the Effective

Date of the Agreement, and thereafter maintain amounts equivalent to Sinking Fund Amount in the Sinking Fund throughout the Term.

- (d) In the event of any shortfall in the Sinking Fund, resulting in the Sinking Fund ceasing to represent the entire Sinking Fund Amount, whether by virtue of a withdrawal therefrom or otherwise, at the end of any financial year, the Developer shall be required to top-up the Sinking Fund, within a period of ninety (90) days therefrom. If the cost of replacement / up-gradation of machines, assets, equipments and fixtures etc. installed as part of Station Development Project Utilities is more than the balance amount lying in the Sinking Fund, then the shortfall shall be met by Developer out of its own funds.

5.9 Temporary Works

- 5.9.1 All temporary works necessary for the proper execution of the Project shall be provided and maintained by the Developer and subject to the consent of the Nodal Officer shall be removed by it when they are no longer required and in such manner as the Nodal Officer shall direct. If temporary works or storage or accommodation are provided by the Developer on the Project Land or any other land permitted by the Nodal Officer (including any Railway land), for the Project for any labour engaged by him for the execution of Project and after obtaining the written consent of the owner of such land, the Developer shall arrange for handing over vacant possession of the said land after relevant works/ use so permitted is completed.

5.10 Intellectual Property

- 5.10.1 The Developer shall procure at its cost and expenses, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project and the Assets and Project Utilities.
- 5.10.2 The title to any Intellectual Property in respect of the Project to the extent made, conceived, prepared or reduced to practice as part of the Project works incorporated into the Project, including any improvements, modifications, enhancements or derivative works shall vest in the Authority at the earliest of its creation, conception or reduction to practice.

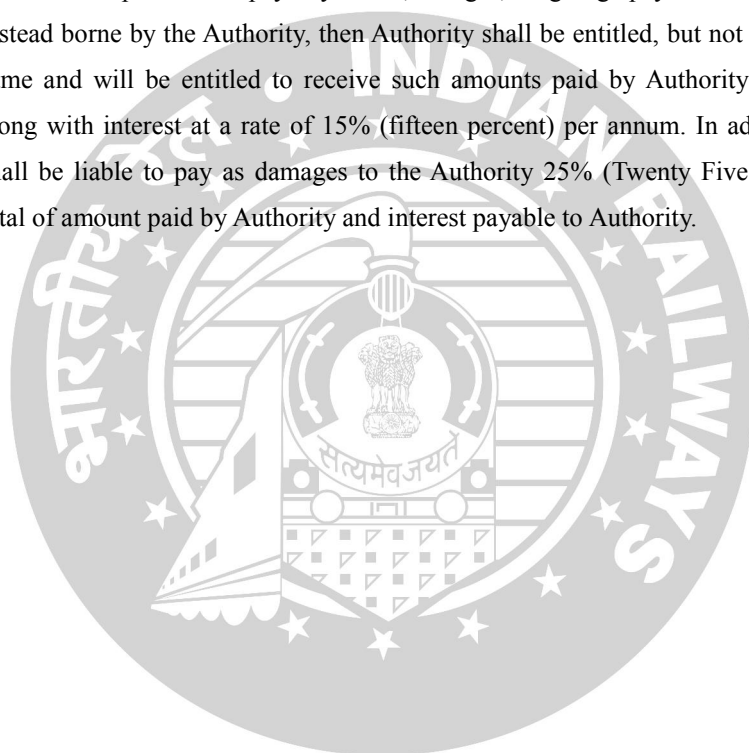
5.11 Substitution

- 5.11.1 The Developer shall ensure and procure that each agreement or contract it

enters into with any third party in relation to the Project, contains provisions that entitle the Nominated Company to step into such agreement, in its discretion, in the event of such Nominated Company's assumption of the liabilities and obligations of the Developer under the Agreement.

5.12 Total Project Cost

- 5.12.1 The Total Project Cost for successful and timely development, implementation and completion of the entire Project and undertake the works related to Scope of the Project and as per terms and conditions of the Agreement shall be borne by and be the liability of the Developer.
- 5.12.2 If the Developer fails to pay any Taxes, charges, outgoings payments etc., and the same are instead borne by the Authority, then Authority shall be entitled, but not be obliged to pay the same and will be entitled to receive such amounts paid by Authority from the Developer along with interest at a rate of 15% (fifteen percent) per annum. In addition the Developer shall be liable to pay as damages to the Authority 25% (Twenty Five Percent) of the sum total of amount paid by Authority and interest payable to Authority.



ARTICLE 6: OBLIGATIONS OF AUTHORITY

6.1 Handover of the Site and Redevelopment Land

6.1.1 Authority shall grant the Developer the right of way to the Site and Redevelopment Land, in accordance with the terms of Article 11.2 and Article 11.3 hereof respectively. Such right of way shall not be exclusive to the Developer.

6.2 Handover of Station Development Land as per Handover Plan– Station Development Land

6.2.1 Authority shall grant to the Developer the right of way to the Station Development Land, in accordance with the terms of Article 11.4 hereof. Such right of way shall not be exclusive to the Developer. The Developer shall be liable for the maintenance of the existing facilities and assets on the Station Development Land (where no construction work is undertaken) right from the date of its handover as per the maintenance manual approved by Authority.

6.3 Assistance in seeking Approvals

6.3.1 The Authority may at the request and cost of the Developer, assist the Developer on best effort basis in applying for permits, license, or approvals which are required for any of the works in relation to the Project, or otherwise for the purposes of undertaking the Project, including clearance from customs for plant and machinery, and for re-export of the Developer's equipment after completion of the Project.

6.3.2 Notwithstanding the foregoing, subject to the Developer preparing and submitting necessary application (together with requisite supporting documentation) and bearing / incurring all cost and expenses for the same, Authority may co-ordinate, liaison, and where necessary or appropriate (having regard to the execution of the Project), submit such applications to the Railways (and/ or other Governmental Authority under the Ministry of Railways), in respect of the following approvals required for the Project:

- (a) Approvals from the Commissioner of Railway Safety;
- (b) Approval of the Railway, in respect of any design, drawings or plans;
- (c) Any other approval, as stated in the SCDA or if required and requested

by the Developer.

[Note: Any other approvals, if required, may be specifically enumerated]



ARTICLE 7: REPRESENTATION & WARRANTIES

7.1 Representations & Warranties of the Developer

7.1.1 The Developer hereby represents and warrants to Authority that as on the Effective Date (which representations and warranties shall be continuing representations and warranties and deemed to have been repeated on each day of the Term of the Agreement):

- (a) It is duly organized and validly existing under the laws of India and that it has been in continuous existence since incorporation;
- (b) It has full power and authority to execute, deliver and perform its obligations under the Agreement and to carry out the Project;
- (c) It has taken all necessary corporate and other actions under Applicable Laws and its Memorandum and Articles of Association to authorize the execution, delivery and performance of its obligations under the Agreement;
- (d) It has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities, or any order, writ, injunction or decree of any court or any legally binding order of any governmental authority, which in the aggregate have or may have Material Adverse Effect on its ability to perform its obligations and duties under the Agreement and undertake the Project in terms of the Agreement;
- (e) It has the technical and financial standing and capacity to undertake and complete the Project;
- (f) All the employees, officials, personnel, agents, contractors and/ or Sub-Contractors utilized/ proposed to be by the Developer for the purposes of the Project, possess/ shall possess the relevant technical and financial standing and capacity to undertake and complete the Project;
- (g) The obligations under the Agreement shall be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (h) The information furnished in the Bid by the Selected Bidder (and as updated on before the date of the Agreement) is true and accurate in

all respects;

- (i) The execution, delivery and performance of the Agreement, does not and will not conflict with, or result in the breach of, or constitute a default under, or affect performance required by any of the provisions of its Memorandum and Articles of Association or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- (j) There are no actions, suits, proceedings or investigations pending, or, to the best of the Developer's knowledge, threatened against it before any court or before any judicial, quasi-judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Developer under the Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties, assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Agreement;
- (k) The Developer hereby expressly covenants and agrees that, throughout the Term hereof, it shall:
 - (i) only use the Project Land to implement the Project, strictly in accordance with the terms and conditions of the Agreement;
 - (ii) not do or permit to be done on the Project Land or the structures thereon, any activities, which may be contrary to any Applicable Laws and Applicable Permits; and
 - (iii) in enjoyment of its rights and fulfilment of its obligations under the Agreement, always comply with the Applicable Laws and Applicable Permits.
- (l) The Developer shall not provide for or amend its Memorandum of Association and Articles of Association in such a way that it:
 - (i) conflicts with the terms and conditions of the Agreement, during the currency of the Agreement.
 - (ii) allows issuance of shares having differential voting rights or dilution of equity/control in any other manner whatsoever, in contravention of provisions of Article 40 hereof.

- (m) It is understood and agreed that the Developer has, by careful examination, satisfied itself as to the nature and location and physical requirements of the Project and the Project Land, the character, quality and quantity of the materials to be encountered, the character of equipment and facilities needed preliminary to and during the progress of the Project, the general and local conditions, the labour conditions prevailing therein, constraints affecting the development and implementation of the Project including the right of way limitations, surface and sub-surface conditions, requirements of DPR and other Specifications, requirements of Applicable Laws and all other matters which can in any way affect the Project (and its implementation) in accordance with the Agreement;
- (n) It has familiarised itself with the requirements of all Applicable Laws and conditions of any Applicable Permits;
- (o) It shall at no time undertake or permit any change in its ownership / shareholding except in accordance with the provisions of Article 40, and shall ensure that the Selected Bidder / in case of consortium its Member, together with its Affiliates, as the case may be, respectively shall adhere to the provisions of Article 40;
- (p) The Selected Bidder/ Consortium members and/ or their Associates / Affiliates have the financial standing and resources to fund the required Equity and raise the debt necessary for undertaking and implementing the Project in accordance with the Agreement;
- (q) The Selected Bidder/ each Consortium member is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation and has requested Authority to enter into the Agreement, and has agreed to unconditionally accept the terms and conditions set forth in the Agreement;
- (r) All the rights and interests in the Project shall pass to and vest in the Authority (and/or its nominee), on the relevant transfer date/ handover date, free and clear of all Encumbrances and encroachments, without any further deed on its part or that of Authority, and that none of the Assets or Project Utilities shall be made subject to any Encumbrance or encroachment in favour of any

- person, save and except as specifically provided in the Agreement;
- (s) 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 rights and entitlements of the Developer under the Agreement or for influencing or attempting to influence any officer or employee of Authority/ Railway in connection herewith; and
 - (t) No representation or warranty by the Developer contained herein or in any other document furnished by it to Authority, or to any Governmental Authority in relation to Applicable Permits contains or will contain any untrue, inaccurate or incorrect statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.

7.2 Design Warranties

7.2.1 Without prejudice to the generality of the foregoing provisions of this Article 7, the Developer represents and warrants that all work performed by the Developer and Sub-Contractor shall be executed with due care and diligence, in conformity with the DPR and Specifications and the other terms of the the Agreement and free of defects and deficiencies, including that:

- (a) The design and engineering of the Project shall satisfy the minimum requirements set forth in the DPR and Specifications, and shall be free of defects and deficiencies. Such engineering and design shall be such that the Project shall function properly in accordance with the terms of the Agreement and the Specifications and shall meet all design, engineering, safety, and operability criteria as specified in the DPR and Specifications and the other terms of the Agreement;
- (b) The fabrication, construction and installation of the Project shall be in accordance with the designs, drawings and DPR and Specifications (including the approved Detailed Design & Drawings) prepared in accordance herewith and approved by Authority/PMC, in accordance with the terms hereof, and all workmanship of the Developer and Sub-Contractors shall be in full conformity with the requirements of the Agreement and free of defects and deficiencies (including latent defects and deficiencies);

- (c) All plant, equipment and materials shall be new and in full conformity with the Specifications and other requirements of the Agreement, shall be of specified quality and where quality is not specified then of suitable quality for the purposes and uses intended and shall be free of defects and deficiencies (including latent defects);
- (d) The Mandatory Project shall be adequate, fit and sufficient for the purposes and uses intended and capable of operation in the manner contemplated hereby and as provided in the DPR and Specifications;
- (e) Without prejudice to the generality of the foregoing, the entire Project shall designed, engineered, constructed, and otherwise implemented and developed so as to ensure that the Assets and the Project Utilities, meet the Design Life.

7.2.2 The Developer's obligation to design, engineer, procure and construct the Project correctly and in accordance with the Agreement and its warranties set forth above shall not be reduced or affected by Authority/PMC/ Nodal Officers approval or grant of NOC, in respect thereof, including for any designs, plans, phasing, drawings or specifications thereof.

7.3 **Representations & Warranties of Authority**

7.3.1 Authority hereby represents and warrants to the Developer that as on the Effective Date:

- (a) It is duly organized and validly existing under the laws of India and has been in continuous existence since its constitution;
- (b) It has full power and authority to execute, deliver and perform its obligations under the Agreement;
- (c) Authority has power and authority to grant the Lease Rights under and pursuant to this Development Agreement;
- (d) It has taken all necessary actions under Applicable Laws to authorize the execution, delivery and performance of the Agreement;
- (e) The obligations of Authority under the Agreement will be legally valid, binding and enforceable against Authority in accordance with the terms of the Agreement;
- (f) 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 Authority which may result in any

Material Adverse Effect or impairment of Authority's ability to perform its obligations and duties under the Agreement; and

- (g) To the best of Authority's knowledge and belief, there are no actions, suits, proceedings or investigations pending against it, before any court or Government Authority in relation to the Site, the outcome of which may result in the breach of or constitute a default of Authority under the Agreement, or result in impairment of Authority's ability to perform its obligations and duties under the Agreement.

7.4 Disclosure

- 7.4.1 In the event at any time after the date hereof, any event or circumstance comes to the attention of Developer that renders any of its abovementioned representations or warranties untrue, inaccurate or incorrect, then such Party shall immediately notify the Authority of the same. Such notification shall not have the effect of (a) remedying any breach of the representation or warranty that has been found to be untrue, inaccurate or incorrect; or (b) adversely affecting the rights of Authority or releasing any obligation of Developer under the Agreement.

ARTICLE 8: DISCLAIMER & LIMITATIONS

8.1 Limited Utilization

8.1.1 The Parties expressly agree that subject to the provisions of the Agreement, the right of way to the Project Land and Lease Rights to the Commercial Development Assets is being granted to the Developer exclusively for the purposes of the Project.

8.1.2 Without prejudice to the aforesaid, the Parties expressly agree that ownership of Assets and Project Utilities created from time to time on the Project Land and the Project Land itself shall always vest with Authority/ the Railway (as applicable), subject to the risk therein (including with respect to any loss and damage thereto) being borne by the Developer, until the respective date of handover/ transfer thereof to Authority (or its nominee, or the relevant Railway) in accordance with the terms of the Agreement.

8.1.3 Notwithstanding anything contrary contained herein, the Developer shall not have any right, entitlements and / or interest, of any nature whatsoever, in respect of any future development and / or works in / around the Station and/or Project Land other than to the extent set out in the DPR and Authority shall be fully entitled to all such future developments and works and shall also have the exclusive prerogative of deciding on matters pertaining to the same without any claims/objection in respect of the same from the Developer.

8.2 Limitation & exclusions to the Grant

8.2.1 The Parties recognize and agree that nothing contained in the Agreement shall be constructed to constitute a transfer of the title to or any ownership rights in the Project Land, the Assets or the Project Utilities developed thereupon in favour of the Developer. The Developer shall not, at any time during the Term, assert any ownership rights and/or lease rights over the Project Land or the Assets and Project Utilities developed thereupon, and/ or any other interests in the Project Land (save and except the Lease Rights to the Commercial Development Assets as set out under the Agreement),

and/or any built-up structures and all other assets erected on the Project Land and/or shops etc., in /at the Station. Further the Lease Rights granted to the Developer in respect of the Commercial Development Assets shall be incapable of conversion into freehold rights. It is further clarified that Developer will have only license to operate the shops / kiosk / commercial areas / outlets in / at the Station subject to and as per terms of the Agreement and Station Facility Management Agreement.

8.2.2 Notwithstanding anything contrary contained herein or in the Bidding Document, the Developer will, after the Appointed Date and after making allowance towards all future payments by the Developer to the Authority and expenditure towards Station Development Project and Redevelopment Project, have only the necessary rights for creation of lien and/or Encumbrance on the Lease Rights of Commercial Development Assets created/ to be created (together with its development rights under the Agreement) in favour of its bankers and insurers in accordance with the terms hereof. For the sake of clarity it is provided that the Developer can obtain loan / financial assistance only after the Appointed Date, and further the Developer shall not have any right to create lien and/or Encumbrance, of any nature whatsoever, in respect of the other Assets, the Project Utilities and/or the Project Land or any part thereof.

8.2.3 Without prejudice to the foregoing, the Developer agrees, confirms and undertakes that it shall not sell, license, sub-license, lease, sub-lease, assign, underlet or sub-let or part with its rights in the Project Land or any part thereof, except any Sub-Lease or Sub-License or Encumbrance on the Lease Rights of Commercial Development Assets as specifically permitted under the Agreement.

8.2.4 No land belonging to or in the possession of the Railway shall be occupied by the Developer without the permission of the Authority. The Developer shall not use, or allow to be used, the Project Land for any purpose other than that of executing the Project. Provided that Developer shall ensure that the Station Development Land and the Redevelopment Land is available for

use by Authority and/ or Railway, their relevant personnel and end-users (including passengers), in accordance with the approved works programme for the Station Development Project and the Redevelopment Project.

8.2.5 It is expressly agreed understood and recorded between the Parties that:

- (a) mining rights cannot, and do not, form part of the rights granted hereunder and the Developer hereby acknowledges that it does not, and shall not, have any mining rights in the Project Land under the Agreement or any interest in the underlying mineral, if any.
- (b) any archaeological discoveries shall belong to and vest in the Government and the Developer shall promptly report the discovery thereof to Authority and the appropriate Government Authority and follow such Authority's instruction for safe removal thereof.
- (c) the Developer shall not sell or otherwise dispose off or remove except for the purpose of the Agreement, the sand, stone, clay, ballast, earth, rock or other substances or materials which may be obtained from any excavation made for the purpose of the Project or any building or produced upon the Project Land.
- (d) Developer undertakes that all gold, silver, oil and other minerals of any description and all precious stones, coins, treasures, relics, antiquities and other similar things including any buried railway utility/material, which shall be found in or upon the Project site shall be duly preserved and handed over to the satisfaction of Authority (or its nominee).

8.2.6 It is expressly agreed between the Parties that Authority reserves for itself, provided that the same is not inconsistent with the Project in accordance with the Agreement, the right to grant any easements over or rights of access or rights of way on, over, under, through or across the Project Land for (a) the purposes of supply of electricity, gas, telecommunication cables,

water, sewerage, drainage or any other services and utilities, or (b) the purposes of transport or other services to the public.

8.2.7 The Developer hereby admits, agrees and acknowledges that Authority has not made any representation to the Developer or given any warranty of any nature whatsoever to the Developer in respect of the Project Land including in respect of its usefulness, utility, or conduciveness for the implementation of the Project, or the fulfillment of criteria or conditions for obtaining Applicable Permits by the Developer for implementing the Project (including on the Project Land).

8.2.8 The Developer shall not assign, transfer or sublet or create any lien or encroachment or easement or Encumbrance on the Agreement or the grant hereby granted or on the whole or any part of the Project Land, the Redevelopment Assets, the Station Development Assets or Project Utilities, nor otherwise transfer, lease, or part possession thereof, save and except as expressly permitted by the Agreement or the Substitution Agreement.

8.3 Deemed Knowledge and Disclaimer

8.3.1 The Developer shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to, the implementation of the Project regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) including underground utilities and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Developer shall not have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from Authority in respect of the Project other than for those matters in respect of which express provision is made in the Agreement.

8.3.2 The Developer shall be deemed to have inspected the Project Land and be aware of the existing boundary wall(s), buildings, constructions, immovable assets, structures, installations, trees, shrubs, electric poles, etc., if any, on

the Site, Redevelopment Land and the Station Development Land.

8.3.3 Further, save and except where any Provisional Sum Items have been specified in respect of the Project Land or any other works in respect of the Project, the Developer shall not make any claim in respect of any change or variation (including in respect of any encroachments, Encumbrances, existing structures, assets, utilities, etc.) on the Project Land after the Appointed Date.





CHAPTER III: DEVELOPMENT AND OPERATIONS

ARTICLE 9: SECURITY DEPOSIT

- 9.1 The Developer agrees and undertakes to provide and maintain with the Authority at all times during the Term, interest-free security deposit (“**Security Deposit**”) to Authority of an amount equal to three times the amount of the then prevailing Annual Lease Rent by way of Demand Draft/bank guarantee in favour of the Authority.
- 9.2 The amount of Security Deposit shall get revised upwardly every three years, which revision shall be corresponding to the increase in Annual Lease Rent. The new bank guarantee towards revised Security Deposit shall be submitted 3 (three) months prior to the date from which the increased Annual Lease Rent is effective to cover the Security Deposit to the entire extent required under the Agreement, and after verification of same by the Authority, the earlier bank guarantee submitted towards Security Deposit will be returned/released.
- 9.3 The said Security Deposit shall constitute a security against any delay and/ or default in the payment by the Developer of the Lease Premium, Annual Lease Rent, any interest thereon and/ or any other amount otherwise required to be paid by the Developer to Authority under the Agreement (including any liquidated damages, or other amounts payable consequent to any breach of the Agreement), and Authority shall be entitled to encash, invoke and draw upon and forfeit the Security Deposit, to recover all such amounts.
- 9.4 In the event that Authority, draws on/ encashes/ invokes the Security Deposit, in part or full, in accordance with the terms of the Agreement, the Developer shall forthwith restore the value of the Security Deposit to entire value required to be then maintained as Security Deposit, under the Agreement.
- 9.5 Subject to Article 9.6 below, any undrawn portion of the Security Deposit shall be returned to the Developer after the Site along with all the Commercial Development Assets and Commercial Development Project Utilities are vested with Authority (or its nominee, including Railway Administration) in accordance with the terms of the Agreement.

- 9.6 Prior to the release of the Security Deposit in accordance with the terms of Article 9.5 above, the Developer shall issue an unconditional and unequivocal no claim certificate in favour of Authority, in respect of the Project (and any dues to the Developer in respect thereof).
- 9.7 No interest shall be payable by Authority on the Security Deposit.
- 9.8 Notwithstanding anything, in the event that the Agreement is terminated due to Developer's Event of Default, Authority shall have the right to forfeit and retain the entire Security Deposit.



ARTICLE 10: PERFORMANCE GUARANTEES

10.1 Performance Guarantee for Project

10.1.1 The Developer hereby confirms that it has duly provided the Performance Guarantee for Project, being a bank guarantee in form set out in **Schedule 18** (*Performance Guarantee for Project*) and undertakes to keep valid and effective (including through necessary extensions and/ or renewals and/ or reinstatements thereof) such guarantee until expiry of 6 (six) months beyond the date on which the last of the following obligations are completed:

- (a) the Developer has paid to Authority all the instalments of the Lease Premium along with all overdue payments as per the **Schedule 3** (*Schedule of Payments*); or
- (b) the Developer has completed the construction of the Project in terms of the Agreement; or
- (c) the Completion Clearance has been issued by the Nodal Officer in respect of the entire Project.

10.1.2 The Performance Guarantee for Project shall be for such amount as set out under Recital of the Agreement, and shall be as security /guarantee against any default in timely payment of consideration, other dues to Authority and fulfilment of other obligations as per the Agreement including timely completion of the Project.

10.1.3 Without prejudice to the generality of the foregoing, it is clarified that Authority shall be entitled to draw and forfeit upon the Performance Guarantee for Project, in respect of any breach or default of the Developer under the Agreement, including without limitation in respect of the Commercial Development Project, the Redevelopment Project and/ or the Station Development Project. Provided that where the delay and/ or default entitling Authority to encash such Performance Guarantee for Project, (a) relates to any subject other than the payment of Consideration (including any interest thereon); and (b) the extent of the entitlement of Authority to encash the Performance Guarantee for Project, is less than the extent of

such Performance Guarantee (or where the said Performance Guarantee has been provided through more than one instrument, then the amount guaranteed through each such instrument), then Authority shall, prior to encashing the Performance Guarantee for Project, provide to the Developer, at least 15 (fifteen) days notice thereof, requiring the Developer to make the requisite payment. Provided that the foregoing shall not be applicable to any event under the Agreement where Authority is entitled to forfeit the entire Performance Guarantee for Project.

10.1.4 In the event Authority encashes/ invokes/ draws on the Performance Guarantee for Project, in part or in full (where such Performance Guarantee is provided through more than one instruments), in accordance with the terms of the Agreement, the Developer shall forthwith, and no later than 15 (fifteen) days therefrom, restore the value of the Performance Guarantee for Project, and/ or provide a new Performance Guarantee for Project in replacement thereof, so as to ensure that the Performance Guarantee for Project is maintained to the entire extent required under the Agreement.

10.1.5 In the event Authority approves extension of the time for completion of the Project or payment of Lease Premium, Annual Lease Rent or any other amount payable under the Agreement, the Developer shall arrange for an extension of the Performance Guarantee for Project so as to comply with the requirements of this Article at all times. In the event the Developer fails to extend the Performance Guarantee for Project, Authority shall be entitled to receive the amount thereunder and the Developer shall, within the time so granted at the sole discretion of Authority, replenish the Performance Guarantee for Project.

10.1.6 In case the Agreement is terminated due to Developer's Event of Default, Authority shall have the right to invoke the Performance Guarantee for Project.

10.2 Performance Guarantee for Mandatory Project

10.2.1 The Developer hereby confirms that it has duly provided the Performance

Guarantee for Mandatory Project, being a bank guarantee in form set out in **Schedule 19** (*Performance Guarantee for Mandatory Project*), and undertake to keep valid and effective (including through necessary extensions and/ or renewals and/ or reinstatements thereof) until expiry of six months beyond the date on which the last of the following obligations are completed:

- (a) the Defects Liability Period in respect of the entire Redevelopment Project expires; and
- (b) the Defects Liability Period in respect of the entire Station Development Project expires.

10.2.2 The Performance Guarantee for Mandatory Project shall be for such amount as set out under Recital of the Agreement, and shall be as security /guarantee against any default in the performance by the Developer of any of its obligations in respect of the Station Development Project and the Redevelopment Project, including without limitation, compliance with the Specifications and Project Schedule.

10.2.3 Without prejudice to the generality of the foregoing, it is clarified that Authority shall be entitled to draw and forfeit upon the Performance Guarantee for Mandatory Project, in respect of any breach or default of the Developer under the Agreement in respect of the Redevelopment Project and/ or the Station Development Project. Provided that where the delay and/ or default entitling Authority to encash such Performance Guarantee for Mandatory Project, (a) relates to any subject other than the payment of Consideration (including any interest thereon), and (b) the extent of the entitlement of Authority to encash the Performance Guarantee for Mandatory Project, is less than the extent of such Performance Guarantee (or where the said Performance Guarantee has been provided through more than one instrument, then the amount guaranteed through each such instrument) , then Authority shall, prior to encashing the Performance Guarantee for Mandatory Project, provide to the Developer, atleast 15 (fifteen) days notice thereof, requiring the Developer to make the requisite payment. Provided that the foregoing shall not be applicable to any event

under the Agreement where Authority is entitled to forfeit the entire Performance Guarantee for Mandatory Project.

10.2.4 In the event Authority encashes/ invokes/ draws on the Performance Guarantee - Mandatory Project, in part or in full (where such Performance Guarantee is provided through more than one instruments), in accordance with the terms of the Agreement, the Developer shall forthwith, and no later than 15 (fifteen) days therefrom, restore the value of the Performance Guarantee for Mandatory Project, and/ or provide a new Performance Guarantee for Mandatory Project in replacement thereof, so as to ensure that the Performance Guarantee for Mandatory Project is maintained to the entire extent required to be maintained under the Agreement.

10.2.5 In the event Authority approves extension of the time for completion (as per the Project Schedule) of the Station Development Project or the Redevelopment Project, the Developer shall arrange for an extension of the Performance Guarantee for Mandatory Project so as to comply with the requirements of this Article at all times. In the event the Developer fails to extend the Performance Guarantee for Mandatory Project, Authority shall be entitled to receive the amount thereunder and the Developer shall, within the time so granted at the sole discretion of Authority, replenish the Performance Guarantee for Mandatory Project.

10.2.6 In case the Agreement is terminated due to Developer's Event of Default, Authority shall have the right to invoke the Performance Guarantee for Mandatory Project.

10.3 SFMA Performance Guarantee

10.3.1 The Developer hereby confirms that it has duly provided the SFMA Performance Guarantee in the form set out in the SFMA Agreement. The provisions governing the SFMA Performance Guarantee including but not limited to its validity, effectiveness, forfeiture, encashment, invocation, drawal, restoration etc., shall be as more particularly set out in the Station Facility Management Agreement.

ARTICLE 11: RIGHT OF WAY

11.1 General Requirements

11.1.1 Subject to the remaining provisions of this Article

- (e) Subject to and after fulfillment by the Developer of all the Conditions Precedent, Authority shall provide to the Developer right of way to (i) the Site, (ii) the Station Development Land, and (iii) the Redevelopment Land on as is where is basis, in accordance with this Article 11. In case the Project includes any Redevelopment Project and/or Station Development Project with respect to development, redevelopment and/ or relocation of existing railway structures on the Project Land, the right of way may be provided in a phased manner as specified in the **Schedule 22** (*Handover Protocol*), and as per the approved Handover Plan – Site, Handover Plan – Redevelopment Land and the Handover Plan – Station Development Land (as applicable).
- (f) The area of the Station Development Land, and the Redevelopment Land shown in **Schedule 1** (*Project Details*) is approximate, and may increase or decrease by a maximum of 10% (ten percent). The Developer shall not have any claim in respect of such increase and/ or decrease and no variation (and/ or adjustment) shall be permitted in respect of the same (including, with respect to the Consideration and/ or the Construction Period).
- (g) Authority shall provide the right of way to the Project Land, on an “as is where is basis” and the Parties shall execute a handing over note (substantially in the form set forth in **Schedule 23** (*Handover Note*), in this regard setting out, in detail, the site inventory as on the date of such handing over of the right of way of respective parcels.
- (h) Subject to Article 11.1.1 (a) to (c) above, and subject further to Developer fulfilling the Conditions Precedent, the right of way to the first of the phases of the Project Land (as set out in **Schedule 22** (*Handover Protocol*)) shall be provided to the Developer on or

before the Appointed Date.

- (i) The Parties agree that the components of the existing structures and utilities, as are so specifically identified in the respective Joint Inventory, that are required to be handed over by the Developer to Authority (and/ or its nominee, including the relevant Railway), shall upon their removal from the Project Land, be so handed over by the Developer to Authority (and /or such nominee) at the location so designated under the Joint Inventory, as far as possible, in a proper arranged/ stacked manner. Provided that all railway materials and equipment (new and/ or release and/ or scrap, as the case maybe), to the extent not embedded in the Project, if any, present on the Project Land, shall, prior to the handover of the relevant part of the Project Land to the Developer, shall be removed from the Project Land, and handed over by the Developer to the relevant Railway. Provided further that all such handover and/ or removal of the said material from the Project Land shall be undertaken in the presence of the designated officials of the Railway.
- (j) The Parties agree that notwithstanding anything contained herein, on and from the date of the LOA the Developer (and his personnel) shall be entitled to request Authority to access the Project Land, prior to the handing over of the relevant portion of the Project Land, to undertake the survey, soil exploration, utility mapping, and inspection of the Project Land, the Joint Inventory contemplated in this Article 11, and to undertake the removal of the relevant railway material and equipment as specified in Article 11.1.1 (e) above. Upon receipt of such request from the Developer, Authority shall endeavour to obtain the approval of the Railway for such access by the Developer, and subject to receipt of such approval, Authority shall permit the Developer to access the Project Land subject to fulfillment of condition(s), if any, specified / laid down by the Authority, and execution and submission by Developer of the requisite indemnity bond(s) and other documents as may be required by the Authority.

11.2 Handover of Site

11.2.1 Notwithstanding anything contained in Article 11.1 above, after fulfilment by the Developer of all the Conditions Precedent, Authority shall provide to the Developer right of way to the Site, for the exclusive purposes of undertaking the Commercial Development Project, in the following manner:

- (a) Authority and the Developer, shall, together with the relevant officials of the Railway, within such time as provided in the SCDA , undertake a joint inspection and prepare and execute a joint inventory (the “**Joint Inventory for Site**”) of the existing structures, assets and utilities on the Site, and shall further record their quality, condition, functionality, in accordance with the requirements of the **Schedule 22** (*Handover Protocol*).
- (b) Based on the Joint Inventory, and the terms of the **Schedule 22** (*Handover Protocol*), the Developer shall within 4 (four) weeks from the preparation of the Joint Inventory – Site or such other further date as provided in the SCDA, prepare and submit to Authority for its approval, a plan for the handover of the Site (“**Handover Plan - Site**”). Without prejudice to the terms of **Schedule 22** (*Handover Protocol*), the Handover Plan - Site, and the phasing thereunder, shall duly take into account:
 - (i) the requirement of relocation of the existing structures, assets and utilities (including the Occupied Redevelopment Areas) contemplated as a part of the Redevelopment Project;
 - (ii) the requirement of minimal disruption/ interruption/ interference to present occupants and users of the Occupied Redevelopment Areas.

Such Handover Plan – Site shall be subject to the approval of Authority, which may be given subject to any modification or amendments that Authority may deem appropriate.

- (c) Authority shall provide the right of way to the Site to the Developer in accordance with the approved Handover Plan - Site and the Parties shall execute a handing over note (substantially in the form

set forth in **Schedule 23** (*Handover Note*), in this regard setting out, in detail, the site inventory as on the date of such handing over of the right of way.

11.2.2 Provided that, the Parties agree and acknowledge that the Occupied Redevelopment Areas (and/ or relevant part thereof), shall continue to remain in use and occupation until such time, as the corresponding portions of the Redevelopment Project (and the Redevelopment Project Utilities), as set out in **Schedule 2B** (*Scope of Redevelopment Project*), have been duly completed (and the Completion Certificate issued in respect thereof), and handed over to Authority (with the issuance of the Vesting Certificate).

11.3 Handover of Redevelopment Land

11.3.1 After fulfilment by the Developer of all the Conditions Precedent, Authority shall provide to the Developer right of way to the Redevelopment Land, for the exclusive purposes of undertaking the Redevelopment Project, in the following manner:

- (a) Authority and the Developer, shall together with the relevant officials of the Railway, within the time prescribed in the SCDA, undertake a joint inspection and prepare and execute a joint inventory (the “**Joint Inventory – Redevelopment Land**”) of the existing structures, assets and utilities on the Redevelopment Land, and shall further record their quality, condition, functionality, in accordance with the requirements of the **Schedule 22** (*Handover Protocol*).
- (b) Without prejudice to the generality of the foregoing, the Joint Inventory–Redevelopment Land shall also record all existing licenses and commercial establishments, passenger amenities, operational areas, offices and utilities, and circulating areas within the Station Development Land.
- (c) Based on the Joint Inventory – Redevelopment Land, and the terms of the **Schedule 22** (*Handover Protocol*), the Developer shall within 2 (two) weeks from the preparation of the Joint Inventory or such other further date as provided in the SCDA, prepare and submit to Authority for its approval, a plan for the handover of the

Redevelopment Land (“**Handover Plan – Redevelopment Land**”), based on feasibility of construction, the preliminary design (as approved/ NOC granted by PMC) construction methodology, the technology and equipment to be adopted.

Without prejudice to the terms of **Schedule 22** (*Handover Protocol*), the Handover Plan – Redevelopment Land, and the phasing thereunder, shall duly take into account:

- (i) the requirement of relocation of existing structures, assets and utilities;
- (ii) the requirement of minimal disruption/ interruption/ interference to persons in occupation of the existing structures, assets and utilities on the Redevelopment Land, as set out in the Joint Inventory – Redevelopment Land;

Such Handover Plan – Station Development Land shall be under the approval of Authority, which may be given subject to any modification or amendments that Authority may deem appropriate.

- (d) Authority shall provide the right of way to the Redevelopment Land to the Developer in accordance with the Handover Plan – Redevelopment Land and the Parties shall execute a handing over note (substantially in the form set forth in **Schedule 23** (*Handover Note*), in this regard setting out, in detail, the site inventory as on the date of such handing over of the right of way.

11.4 Handover of Station Development Land

11.4.1 After fulfilment by the Developer of all the Conditions Precedent, Authority shall provide to the Developer right of way to the Station Development Land, for the exclusive purposes of undertaking the Station Development Project, in the following manner:

- (a) Authority and the Developer, shall together with the relevant officials of the Railway, within 4 (four) weeks of Effective Date or such other further date as provided in the SCDA, undertake a joint inspection and prepare and execute a joint inventory (the “**Joint Inventory – Station Development Land**”) of the existing structures, assets and

utilities on the Station Development Land, and shall further record their quality, condition, functionality, in accordance with the requirements of the **Schedule 22** (*Handover Protocol*). It shall be further reconfirmed and updated one week prior to the Appointed Date.

- (b) Without prejudice to the generality of the foregoing, the Joint Inventory– Station Development Land shall also record all existing licenses and commercial establishments, passenger amenities, operational areas, offices and utilities, and circulating areas within the Station Development Land.
- (c) Based on the Joint Inventory – Station Development Land, and the terms of the **Schedule 22** (*Handover Protocol*), the Developer shall within 2 (two) weeks from the preparation of the Joint Inventory or such other further date as provided in the SCDA, prepare and submit to Authority for its approval, a plan for the handover of the Station Development Land (**“Handover Plan – Station Development Land”**), based on feasibility of construction, the preliminary design (as approved/ NOC granted by PMC) construction methodology, the technology and equipment to be adopted.

Without prejudice to the terms of **Schedule 22** (*Handover Protocol*), the Handover Plan– Station Development Land, and the phasing thereunder, shall duly take into account:

- (i) the requirement of relocation of essential passenger amenities, railway operational areas, equipment, and utilities;
- (ii) the requirement of minimal disruption/ interruption/ interference to normal Railway Operations and Railway Development Project (if any) in the Station, involving passenger movement/ usage and railway staff;
- (iii) the requirement of minimal interference with the train operations, in accordance with Article 14 hereof;

- (iv) the requirement of making alternative arrangements for existing licensees (private vendors) of Railways which are infringing the construction area, till the end of their respective license period.

Such Handover Plan – Station Development Land shall be subject to the approval of Authority, which may be given subject to any modification or amendments that Authority may deem appropriate.

- (d) Authority shall provide the right of way to the Station Development Land to the Developer in accordance with the Handover Plan – Station Development Land and the Parties shall execute a handing over note (substantially in the form set forth in **Schedule 23** (*Handover Note*), in this regard setting out, in detail, the site inventory as on the date of such handing over of the right of way.

11.5 Grant of right of way to other land

- 11.5.1 Authority may on request by the Developer, and subject to availability, grant to the Developer such additional non-exclusive right of way to such other lands as may be deemed fit by Authority. All such lands shall be utilised by the Developer expressly for the purposes of the Project and associated works. Provided that the grant (and/ or withdrawal) of any such right of way (if any), would be undertaken at the sole discretion of Authority, and on such terms & conditions (including timing of availability and licensee fees (and/ or other payment)) as may be prescribed by Authority in this regard. Without prejudice to the foregoing, the non-availability of any such additional land shall not be a ground for extension of time and/ or adjustment of the Consideration or other payments hereunder.

11.6 Existing Structures, Utilities, encroachments and Encumbrances

11.6.1 Notwithstanding anything contained herein, the Developer agrees and acknowledge that there subsist certain existing structures, utilities, encroachments and Encumbrances on the Site, Redevelopment Land and the Station Development Land, as further identified in accordance with the terms of **Schedule 1E** (*Structures, Utilities, Encroachments and Encumbrances*), and the Developer would be required to undertake the Project (including necessary design and phasing) keeping the same in mind, as also the specific requirements of **Schedule 1E** (*Structures, Utilities, Encroachments and Encumbrances*) in respect of the relevant existing structures, utilities, encroachments and Encumbrances.

It is clarified that no adjustment of the Term, Lease Period, the relevant time for completion and/ or the Consideration shall be permissible in respect of any delay or other circumstances affecting the execution of the Project, to the extent that the same relate to and/ or arise out of such existing structures, utilities, encroachments and Encumbrances.

11.7 Transition Phase

11.7.1 The period of 90 (ninety) days commencing from Appointed Date shall constitute the 'Transition Phase' for effectuating the handover in terms of this Article. In the event the activities proposed to be undertaken during the Transition Phase including handover of Station Development Land have not been completed within the abovementioned period of 3 (three) months, then the Transition Phase shall be extended by a maximum additional period of 90 (ninety) days.

11.7.2 All benefit and burdens associated with the actions of the Authority during the Transition phase pursuant to this Article 11.7 shall be to the account of the Developer and not the Authority. To this end, Developer shall indemnify and keep indemnified the Indemnified Parties, against any Liability or cost, arising on account of any reason whatsoever (except any liability or cost arising due to gross negligence or willful default of the Authority), as relatable to the Station, during the Transition Phase. It is further clarified that

any portion of the charges as may be collected by the Authority during the Transition Phase under Existing Contracts to be novated in favour of Developer shall be collected by Authority for and on behalf of the Developer and shall be deposited by Authority into the Escrow Account.



ARTICLE 12: PROJECT SCHEDULE AND KEY DATES

12.1 Compliance with the Project Schedule

12.1.1 The Developer shall be required to undertake and implement the Project in accordance with the Project Schedule. A failure of the Developer to undertake the Project in accordance with the Project Schedule shall constitute a material breach of the Agreement.

12.1.2 In addition, the Developer shall, in respect of a failure to implement the Project in accordance with the Project Schedule including a failure to achieve the completion as per the relevant Key Dates and milestones as specified under **Schedule 4** (*Project Schedule*), also be liable to pay such amounts towards liquidated damages as specified under the said **Schedule 4** (*Project Schedule*). Such liquidated damages, constitute a genuine pre-estimate of the loss and damage occurring to Authority on account of a failure of the Developer to adhere to the Project Schedule, and shall not be by way of penalty.

Provided that, where the Developer duly achieves any subsequent Key Dates and milestones as set out in **Schedule 4** (*Project Schedule*), in respect of the Station Development Project or the Redevelopment Project (as applicable), the amount of liquidated damages paid by the Developer in respect of any failure to achieve any preceding key dates and milestones (as set out in **Schedule 4** (*Project Schedule*), shall be refunded by Authority to the Developer, within a period of 30 (thirty) days.

ARTICLE 13: WORKS PROGRAMME REQUIREMENTS

13.1 General

13.1.1 The stages and Key Dates are defined in **Schedule 4** (*Project Schedule*). The Developer shall prepare and submit its works programme and three month rolling programme for the Mandatory Project, in accordance with the requirements specified hereunder.

13.1.2 In compiling such works programme and in all subsequent reporting and updating, the Developer shall make provision for the time required for co-ordinating and completing the design and testing of the works, including design co-ordination periods during which the Developer shall co-ordinate its design with those of its Sub-Contractors, the review procedures, determining and complying with the requirements of Governmental Authorities and all others whose consents, permissions, Authority and license is required prior to the execution of any work. The works programme shall also take full account of the design submission programme in terms of Article 16.

13.2 Purpose of Works Programme

13.2.1 The primary purpose for the works programme submission is to provide the PMC/ Authority with status reports for managing, monitoring and co-ordinating the Mandatory Project, during their execution, so as to complete the Mandatory Project within the Key Dates specified in **Schedule 4** (*Project Schedule*).

13.2.2 The works programme, and its more detailed and revised versions shall be submitted to the PMC for its consent.

13.3 Methodology

13.3.1 The computerised critical path method (CPM), using the precedence diagramming method (PDM) has been selected by Authority as the technique for contract management. This technique shall be employed by

the Developer during implementation of the Mandatory Project. Unless otherwise agreed to by the PMC, all work programmes submitted by the Developer shall be produced using such computerised CPM networks, implementing the PDM method, with cost loaded charts and tables.

13.3.2 The Developer shall implement the approved works programme throughout the duration of the Agreement, to plan, execute, maintain and manage the planning, design, pre-construction and Sub-Contracts. The reports, documents and data provided by the works programme shall be an accurate representation of the works for the Mandatory Project, and the works remaining to be accomplished, and shall provide a sound basis for identifying problems, deviations from the planned works and for making decisions and shall enable timely preparation of the same for presentation to the PMC.

13.4 Programme management software

13.4.1 The CPM programming software shall be jointly decided by the Authority and the Developer and the version of such CPM Programming software should not be older than 2 (two) years from the Effective Date. The scheduling software and relevant instruction manuals licensed for use in connection with the Agreement shall be provided by the Developer to the PMC/ Authority.

13.5 Base Line Programme

13.5.1 The Developer shall develop its initial works programme for the Mandatory Project, including an outline narrative statement, and submit the same within 30 (thirty) days of the Appointed Date or such other further date as provided in the SCDA, and its detailed version within 15 (fifteen) days of receiving the PMC's consent to the proposed initial works programme for the Mandatory Project or such other further date as provided in the SCDA. After approval by the PMC (which approval shall be granted with the concurrence of the Nodal Officer), the detailed version of the works programme shall form the base line programme, against which the actual

progress of the works towards the Mandatory Project shall be reckoned. As the works progresses, it may be necessary to update and/ or revise the works programme, provided that any such updating shall only be carried out with the prior consent of the PMC, or as directed by the PMC (which consent or direction shall be granted with the concurrence of Nodal Officer).

13.5.2 The initial and detailed works programme shall be submitted to the PMC in two (2) hard copies, together with a soft copy, in each case accompanied by the following reports:

- (a) Base line CPM network;
- (b) Base line scheduled report;
- (c) Narrative; and
- (d) Resource Charts;

13.5.3 While preparing the works programme for the Mandatory Project, the Developer shall ensure that the works, where implemented in accordance with such works programme, shall achieve the relevant Key Dates.

13.6 Programme Monitoring

13.6.1 The Developer shall submit a three month rolling programme (in 2 (two) hard copies and one soft copy), presented in a bar chart and time scale network format, to the PMC/ Authority every month for the immediately succeeding three months, together with a monthly progress report covering the actual progress in the immediately preceding month .

13.6.2 The tasks in the rolling programme shall be derivatives of, and directly relatable to the tasks indicated in the approved base line works programme. The activity duration shall not exceed two weeks unless otherwise consented to by the PMC. Each activity in the three month rolling programme shall be coded or described to clearly indicate the corresponding activity in the approved base line works programme.

13.7 Rolling Bar Chart

13.7.1 The Developer shall ensure that once a week, on a day mutually agreed to by the PMC and the Developer, a meeting shall be held to assess progress by the Developer during the previous work week. The Developer shall submit a construction schedule listing activities completed and in progress from the previous and the activities schedules for the succeeding two weeks, based on the detailed works programme, in accordance with Article 20.



ARTICLE 14: INTERFERENCE WITH RAILWAY OPERATIONAL ACTIVITIES

14.1 No interference with Railway Operational Activities

- 14.1.1 The Developer shall ensure that the Project is undertaken in a manner that does not interfere with or hinder or otherwise obstruct Railway Operational Activities at the Station (or otherwise). In the event that any such interference or hindrance or obstruction is contemplated, the same shall be specifically identified in the preliminary design, and be subject to the specific approval of the Nodal Officer/Authority.
- 14.1.2 In particular, the Developer shall ensure that no vehicle or other equipment required for the Project shall ply or be maintained on any portion of the Project Land immediately adjacent to any running railway line. Where any such vehicle is required to ply or equipment required to be maintained adjacent to a running railway line, prior permission for the same shall be obtained from Authority.
- 14.1.3 Provided that where the Project (or its implementation) causes such an interference or hindrance or obstruction to Railway Operational Activities, then save and except to the extent that the same has previously been approved by Authority, it shall be open to Authority to direct the Developer to cease and remove such interference or hindrance or obstruction or part of the Project, and in the event of the failure of the Developer to undertake the same, undertake the same at the risk and cost of the Developer.

14.2 Undertaking of the Block Works

- 14.2.1 The Developer agrees that prior to the commencement of the Project, the Developer shall as a part of the preliminary design submission, set out the works which may potentially impede or obstruct the normal railway operations being the traffic and power blocks (collectively “**Block Works**”), and also setting forth therein the proposed times and schedules at which work in respect of the said portion of the Project is proposed to be undertaken. The Developer shall only undertake such works upon the approval of the preliminary design by Authority, provided that Authority shall be entitled to affect such modifications/alteration to the said phasing plan, as Authority may, in its discretion believe essential to minimize any impact on normal railway operations / Railway Operational Activities.

14.3 Approvals for Train & Power Block Works

14.3.1 Where the Developer (subject to compliance with the approved preliminary design) proposes to undertake any Block Works, he shall on or prior to the relevant due date specified under Part A of **Schedule 25** (*Block Works*) in respect of the relevant Block Works, submit a request to the relevant Railway Administration through Authority, for undertaking the relevant Block Works, which application shall be made in the format specified in Part B of the said **Schedule 25** (*Block Works*). Subject to the approval of the relevant Railway Administration, the Developer shall be entitled to undertake the relevant Block Works (“**Approved Block Works**”). Provided that the Developer shall not in any event be entitled to any extension of the area/ extent of Railway Operational Activities affected by the Approved Block Works.

14.3.2 Applicable Charges:

- (a) Any approval of the relevant Railway Administration for any Block Works, which is over and above the number of permitted Block Works, if any, shall be subject to the due payment by the Developer to Authority, of the applicable block charges in respect of the said Block Works, in accordance with Part A of **Schedule 25** (*Block Works*). The Developer agrees and acknowledges that the amounts specified in the foregoing provisions of this Article, are required to be paid by the Developer, in advance, together with the request submitted under Article 14.3.1 above, and are payable over and above the Consideration specified hereunder.
- (b) Where any instance of the Block Works implemented by the Developer, exceeds the Approved Block Works, the Developer shall, in addition to the applicable block charges, be, forthwith, and no later than 2 (two (2) days thereafter, required to pay the applicable extent of liquidated damages in accordance with **Part A of Schedule 25** (*Block Works*),
- (c) Where the Developer fails to duly utilise the approved block, whether in part or full, in respect of any Approved Block Works, the

Developer shall not be entitled to any refund or adjustment of the payment made in respect thereto.

14.3.3 Notwithstanding any application by the Developer or any approval granted in respect of the Block Works, Authority and/ or the relevant Railway Administration shall be entitled to cancel any approval or refuse to permit all or any part of the Block at any time, without assigning any reasons thereof. The Developer shall not be entitled to any compensation in respect of any such cancellation and/ or refusal of permission for the Block Works.

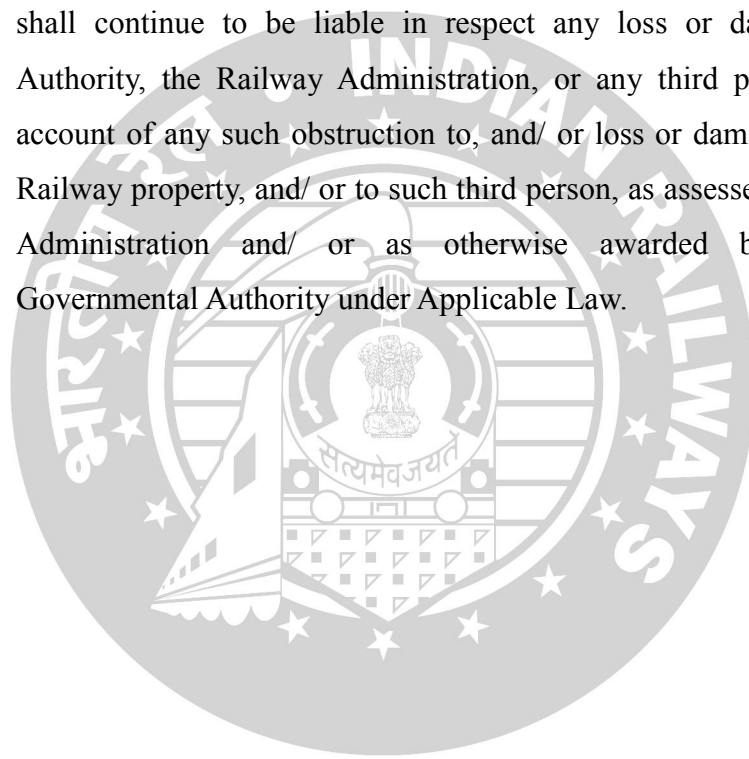
14.3.4 Notwithstanding any approval of Authority and/ or the Railway Administration, in respect of any Block Works, the Developer shall continue to be liable in respect any loss or damage caused to Authority, the Railway Administration, or any third party, in the course of the implementation of the relevant Block Works, and shall indemnify and hold harmless Indemnified Parties, in respect thereof.

14.3.5 Without prejudice to the foregoing, all Block Works shall be undertaken by the Developer in compliance with the provisions of Part C of **Schedule 25** (*Block Works*) and as per the requirements, manuals and specifications, prescribed by the Railway or any other relevant Governmental Authority, in respect of such works.

14.4 Damages for unapproved Block Works

14.4.1 The Developer shall not, in undertaking any portion of the Project, cause, any obstruction to the normal functioning of Railway Operational Activities, without a prior approval for the relevant Block Works in accordance with Article 14.3 above. Provided that where the Developer, without any approval for the Block Works (a) causes such an obstruction to Railway Operational Activities, and/ or (b) where the relevant Railway Administration, is required to suspend or otherwise reduce the Railway Operational Activities on account of any unsafe conditions created on account of the implementation of the Project by the Developer and /or any

loss or damage to the Railway property (including any accident and/ or derailment), on account of the implementation of the Project by the Developer, the Developer shall, in addition to any liabilities under Applicable Laws, be liable to pay, as liquidated damages, such sum per minute for which it obstructs the normal Railway Operational Activities, as set forth in the **Part A of Schedule 25** (*Block Works*). It is further clarified that where such delay exceeds the time as set forth in the **Part A of Schedule 25** (*Block Works*), the Developer shall be required to pay, for each additional minutes of delay, the escalated liquidated damages as set forth in the **Part A of Schedule 25** (*Block Works*). Further, the Developer shall continue to be liable in respect any loss or damage caused to Authority, the Railway Administration, or any third person, caused on account of any such obstruction to, and/ or loss or damage caused to the Railway property, and/ or to such third person, as assessed by the Railway Administration and/ or as otherwise awarded by the relevant Governmental Authority under Applicable Law.



ARTICLE 15: UTILITIES & DIVERSION

15.1 Requirement for relocation/ diversion of Utilities

15.1.1 Before commencement of construction work with respect to the Project, the Developer shall provide to the PMC the requirement for the relocation/ diversion of the existing overground and underground utilities (whether live or dead) at the Project Land (which, in the case of the Mandatory Project shall be undertaken as part of the Detailed Designs & Drawings for the Mandatory Project), and the justification thereof, and obtain the specific approval of the PMC for the same.

15.2 Diversion of Utilities

15.2.1 In the event that any existing utilities/structures laid upon or under the Project Land are required to be relocated/ diverted in accordance with Article 15.1 above, then the Developer shall be required to relocate all such utilities/structures at its own risk, with the prior written approval of Authority and applicable Government Authority(s) as per following procedure:

- (a) The Developer shall be required to dismantle / dispose / relocate all existing utilities on the Project Land, in accordance with the approved utility diversion plans/ drawings, provided that any such dismantling/ disposal of the existing utilities on the Project Land shall only be undertaken to the extent necessary for the implementation of the Project, keeping in view the requirements of the Project Schedule and the Specifications;
- (b) Any major utility diversion shall be avoided either by altering the plan or by changing the site (reduction in area or lateral shifting of land boundaries, as may be agreed by Authority);
- (c) All minor utilities, excluding live S&T, optical fibre cable and power cable, will be diverted by the Developer as per the plan approved by Authority. For S&T, optical fibre cable and power cable, if Authority agrees for diversion by the Developer, only then the diversion work will be taken up. If Authority so desires, S&T and power cable may be diverted by them within the agreed time frame so that

construction of Project does not suffer on account of delay in the diversion. In case of utilities by non-railway service providers like BSNL, water supply boards, municipalities etc. where the project agency is required to deposit money to the utility owning agency for any diversion, the Developer will coordinate with the respective utility owning agency in finalizing the cost estimate of the diversion and make the required payments in compliance with the requirements of the relevant authorities and agencies.

15.3 Cost of Diversion

15.3.1 The Parties agree that the Agreement has been entered into based on the understanding that the aggregate cost of diversion of all existing utilities and/or structures (as required to be diverted) for the Project shall not exceed the sums set forth in **Schedule 16** (*Provisional Sums*), and that in the event that the actual cost of diversion of the utilities is at variance from the said sums set forth at **Schedule 16** (*Provisional Sums*), then the adjustment mechanism in this Article 15.3 shall apply;

15.3.2 The Developer agrees that the diversion of all utilities shall be undertaken either through the appointment of suitably qualified Sub-Contractors or through the relevant local / Governmental Authority. The appointment of:

- (a) the Sub-Contractor shall be made through an open tender process (or other process specifically approved by Authority), based on which the Developer shall appoint the Sub-Contractor offering the most beneficial commercial terms, keeping in the view the requirements of the Project Schedule and Specifications.
- (b) the relevant local / Governmental Authority shall be made on the best commercial terms offered by such local / Governmental Authority.

15.3.3 In the event that:

- (a) the actual cost of diversion of the utilities undertaken through Sub-Contractors or local / Governmental Authority as appointed above is

higher than the sums allocated for such diversion under **Schedule 16** (*Provisional Sums*), the Developer shall be entitled to reduce, from the next tranche(s) of the Consideration payable by the Developer to Authority in terms of the **Schedule 3** (*Schedule of Payments*), an amount equal to the amount by which the actual cost of diversion exceeds the sums allocated for such diversion;

- (b) the actual cost of diversion of the utilities undertaken through Sub-Contractors or local / Governmental Authority as appointed above is lower than the sums allocated for such diversion under **Schedule 16** (*Provisional Sums*), the Developer shall be required to pay, along with the immediately subsequent tranche of the Consideration payable by the Developer to Authority in terms of the **Schedule 3** (*Schedule of Payments*), an amount equal to the amount by which the actual cost of diversion is lower than the sums allocated for such diversion.

- 15.3.4 Notwithstanding the foregoing provisions of this Article 15.3, the adjustment mechanism specified under this Article 15.3 shall not be applicable to any structures, utilities, or other encroachments or Encumbrances identified under **Schedule 1E** (*Structures, Utilities, Encroachments and Encumbrances*), in respect of the relevant part of the Project Land, and the Developer acknowledges that the costs of relocation and/ or diversion thereof have been duly taken into account in the determination of the Consideration, and such costs shall not be taken into account for the determination of the aggregate cost of diversion/ relocation of under **Schedule 16** (*Provisional Sums*).

ARTICLE 16: DESIGN OF MANDATORY PROJECT

- 16.1 The Developer shall carry out, and be responsible for, the design of the entire Mandatory Project, at his own cost and expense and in compliance with the DPR, the Specifications and all Applicable Laws. The procedural requirements for the preparation of the design of the Mandatory Project shall be as provided in this Article 16 and **Schedule 28** (*Design Requirements*). These requirements are subdivided into those that are to occur during the design phase, those that are to occur during the construction phase, and those that are of general application.
- 16.2 The Detailed Design & Drawings for the Mandatory Project shall be prepared by the Developer based on the DPR through a project design consultant (“**Project Design Consultant**” or “**PDC**”) and their qualified designers who are engineers and/ or other qualified professionals well experienced in the relevant design work. The prior consent of the Nodal Officer shall be obtained to the appointment of any designer who is not an approved PDC (or an employee/ sub-contractor thereof). Nothing contained in the Agreement shall create any contractual relationship or professional obligations between such PDC, designer, and Authority.
- 16.2.1 The Developer holds himself, and his PDC as having the experience and the capability necessary for undertaking the design. The Developer undertakes that the PDC and its designer(s) shall be available to attend discussions with the PMC at all reasonable times during the Construction Period.
- 16.2.2 The Developer shall establish an office for his whole design team at the location as specified in the SCDA. The core design team shall function from this office, and as per requirements shall visit the Project Land from time to time, including as required in respect of meeting with Authority and the PMC.
- 16.2.3 The design for the Mandatory Project (including the approved Detailed Design & Drawings) shall adhere to the quality assurance plan, as required to be prepared by the Developer under **Schedule 27** (*Quality Assurance*).

- 16.3 The Detailed Design & Drawings for the Mandatory Project shall be made in accordance with the DPR and requirements of **Schedule 28** (*Design Requirements*), and shall include the preliminary design, the detailed design, the construction reference drawings and the working drawings, prepared in accordance therewith.
- 16.4 The Developer shall prepare Detailed Design & Drawings for the Mandatory Project in sufficient detail to satisfy all regulatory approvals, to provide suppliers, contractors, sub-contractors, service providers and/ or construction personnel sufficient instruction to execute the entire Mandatory Project, and to describe the operation of the complete Mandatory Project. The Detailed Design & Drawings shall be based on the DPR and Specifications, including specifically the initial maps, designs, drawings, plans and tracings or prints thereof annexed hereto in **Schedule 11** (*Drawings for Mandatory Project*) or approved subsequently by the Nodal Officer and the requirements set forth in **Schedule 28** (*Design Requirements*). The PMC shall have the right to review and inspect the preparation of the Detailed Design & Drawings for the Mandatory Project, wherever they are being prepared.
- 16.4.1 Each of the Detailed Design & Drawings for the Mandatory Project shall, when considered ready for use, be submitted to the Nodal Officer for review and approval (which approval shall be granted with the concurrence of Authority/ Railways). If the Nodal Officer notifies the Developer that the Detailed Design & Drawings fails (to the extent stated) to comply with the Specifications, including the without limitation the those set out in **Schedule 28** (*Design Requirements*), it shall be resubmitted and reviewed in accordance with this Sub-Article (be subject to such amendments and modifications as required by the Nodal Officer), at the cost and expense of the Developer.
- 16.4.2 For each part of the Mandatory Project, and except to the extent that the prior consent of the Nodal Officer shall have been obtained:
- (a) construction and/or development shall not commence prior to the approval by the Nodal Officer of the entire Detailed Design & Drawings which are relevant to the design and construction of such part of the works;

- (b) all construction and development shall be undertaken in accordance with approved Detailed Design & Drawings; and
 - (c) if the Developer wishes to modify any Detailed Design & Drawings document which has previously been submitted for such review of the Nodal Officer, the Developer shall immediately notify Nodal Officer, and shall subsequently submit documents to the Nodal Officer for review.
- 16.4.3 Where the Nodal Officer instructs that further Detailed Design & Drawings are necessary for carrying out the Mandatory Project, the Developer shall upon receiving the Nodal Officer's instructions prepare at its own cost such additional Detailed Design & Drawings.
- 16.4.4 Errors, omissions, ambiguities, inconsistencies, inadequacies and other defects in the Detailed Design & Drawings (and the consequent Mandatory Project) shall be rectified by the Developer at his own cost and expense. Any approval or acceptance or NOC by Authority or the Nodal Officer of the Detailed Design & Drawings shall not amount to a waiver and shall not in any manner relieve the Developer of his obligations under the Agreement and/ or any Applicable Law.
- 16.5 The design of the Mandatory Project, the Detailed Design & Drawings, and the execution and the completed Mandatory Project (including remedying of defects therein) shall comply with the DPR and Specifications, and all building construction, safety and environmental regulations, and the regulations applicable to Works as specified in the Agreement and all Applicable Laws.
- 16.6 The Developer shall submit at his own cost the samples and relevant information to the PMC for review and approval of the Detailed Design & Drawings in accordance with the procedure described in Article 16.3, all such samples (if any) specified in **Schedule 28** (*Design Requirements*) and/or the other Specifications. Each of the samples shall be labelled as to origin and intended use in the Mandatory Project.

16.7 The Developer shall prepare, and keep up-to-date, a complete set of “as-built” records of the execution of the Mandatory Project, showing the exact “as-built” locations, sizes and details of the Mandatory Project as executed, with cross reference to relevant Specifications and data sheets. These records shall be kept on the relevant portion of the Mandatory Project and shall be used exclusively for the purposes of this Article.

16.7.1 In addition, the Developer shall prepare and submit to the PMC “as built drawings” of the Mandatory Project, showing all works as executed. The ‘as built drawings’ shall be prepared as the Mandatory Project proceed, and shall be submitted to the PMC for his inspection. The Developer shall obtain the consent of the PMC as to their size, the referencing system and other pertinent details.

16.7.2 Prior to the issuance of the Completion Clearance, the Developer shall submit to the PMC one soft copy, one full-size original copy and six printed copies of the relevant “as-built drawings”, and any further Detailed Design & Drawings specified in the Schedules. The Completion Clearance for the Mandatory Project shall not be issued to the Developer under Article 21.2 until such documents have been submitted to the PMC.

16.8 Prior to commencement of the Tests, the Developer shall prepare, and submit to the Nodal Officer operation and maintenance manuals, in accordance with the **Schedule 28** (*Design Requirements*) and other Specifications and in sufficient detail for Authority to operate, maintain, dismantle, reassemble, adjust and repair the Mandatory Project. The Mandatory Project shall not be considered to be completed for the purposes of the issuance of the Completion Clearance under Article 21.2 until such operation and maintenance manuals have been submitted to the Nodal Officer and received his consent.

16.9 If errors are found in the Detailed Design & Drawings, they shall be corrected and the works in the Mandatory Project rectified at the Developer’s cost.

- 16.10 If Developer performs any works in a manner contrary to such Specifications and approved Detailed Design & Drawings or any of them and without such reference to the PMC, it shall bear all the costs arising or ensuing therefrom and shall be responsible for all loss to the PMC, Authority or the Railway.
- 16.11 The Developer shall indemnify Indemnified Parties from and against Liabilities, all claims and proceedings on account of infringement (or alleged infringement) of any patent rights, registered designs, copyright, design, trademark, trade name, know-how or other intellectual property right in respect of the works, Developer's equipment, machines, work method, or plant or materials, Detailed Design & Drawings or anything whatsoever required for the Mandatory Project (excluding the Specifications) and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. The Developer shall pay all traffic surcharges and other royalties, license fees, rent and other payments and compensation, if any, for getting stone, sand, gravel, clay or other material, machine, process, systems, work methods, or Developer's equipment necessary for the Mandatory Project.
- 16.11.1 The Developer shall, in the event of infringement of intellectual property rights in the execution or in any part of the Mandatory Project, rectify, modify or replace at his own cost the works, plant or materials or anything whatsoever required for Mandatory Project such that the infringement no more subsists or in the alternative shall procure necessary rights/license so that there is no infringement of intellectual property rights.
- 16.11.2 The Developer shall be promptly notified of any claim under this Article made against Authority. The Developer shall, at his cost, conduct negotiations for the settlement of such claim, and any litigation or arbitration may arise from it. Authority or the Nodal Officer shall not make any admission which might be prejudicial to the Developer, unless the Developer has failed to take over the conduct of the negotiations, litigation or arbitration within a reasonable time after having been so requested.

16.12 Preparation & Approval of Interfacing Areas Development Plan

16.12.1 Any common areas, facilities, access points, structures, utilities, or other interfacing areas as between the Site and the Redevelopment Land, or the Site and the Station Development Land, the design, development, construction, operation and maintenance thereof, shall be undertaken by the Developer in accordance with the Interfacing Structures and Areas Plan.

- (a) The Developer shall submit for the approval of the Nodal Officer an Interfacing Structures and Areas Plan setting out the programme for the development and the time schedule of various items of works for completing the development and/ or upgradation of the entire Interfacing Structures and Areas, subject however to the Interfacing Structures and Areas Plan ensuring that the development and/ or upgradation of the Interfacing Structures and Areas would be in compliance with the Project Schedule, Specifications and Applicable Laws.
- (b) The Interfacing Structures and Areas Plan as approved by the Nodal Officer (subject to such modifications and amendments as may be specified and/ or approved by the Nodal Officer), shall be binding on the Developer, and the Developer shall be required to undertake the development of the Interfacing Structures and Areas in accordance with such approved Interfacing Structures and Areas Plan.

16.13 Interfacing Areas and Structures

16.13.1 In the event that there subsist any common areas, facilities, access points, structures, utilities, or other interfacing areas as between the Site and the Redevelopment Land, or the Site and the Station Development Land, the design, development, construction, operation and maintenance thereof, shall be undertaken by the Developer in accordance with the Interfacing Structures and Areas Plan. Provided however, that where the Developer is required to undertake inter-alia the design, development and construction of any Interfacing Structures and Areas:

- (a) The Detailed Design & Drawings in respect thereof, shall be subject to the approval of the Nodal Officer in the same manner, and shall be required to be undertaken as a part of the approval process for the Detailed Design & Drawings for the Mandatory Project.
- (b) The Completion Clearance of any Interfacing Structures and Areas, shall be subject to the approval of the Nodal Officer in the same manner, and shall be required to be undertaken as a part of the approval process for the Completion Clearance for the Mandatory Project.



ARTICLE 17: DEVELOPMENT OF THE STATION AREA

17.1 Development Obligation for Station Development Project

17.1.1 The Developer shall provide, furnish and perform, on a turnkey basis all necessary design, Detailed Design & Drawings, engineering, procurement, supplies, installation, erection, construction, testing, commissioning activities and all other works required in respect of the Station Development Project, and undertake all necessary rectification and remedial services, activities and work relating to defects and deficiencies during the Defects Liability Period, in each case in accordance with the DPR and Specifications for the Station Development Project.

17.2 Adherence to Specifications, Drawings and Plans

17.2.1 The whole of the works in respect of the Station Development Project shall be executed in perfect conformity with the DPR, Specifications and approved Design & Drawings for the Station Development Project, and in accordance with the approved works programme for the Station Development Project and the Handover Plan – Station Development Land.

17.2.2 If Developer performs any works in a manner contrary to such Specifications and approved Design & Drawings, the approved works programme for the Station Development Project, the Handover Plan– Station Development Land or any of them and without such reference to the Nodal Officer it shall bear all the costs arising or ensuing therefrom and shall be responsible for all loss to Authority or the Railway.

17.3 Setting out of Works

17.3.1 The Developer shall be responsible for the correct setting out of all works on the ground and compliance with the approved Design & Drawings with respect to the Station Development Project. The Developer shall provide all facilities like labour and instruments and shall co-operate with the PMC (and/ or Nodal Officer) and their representatives to check the setting out of

the Station Development Project. If instructed by the PMC (and/ or Nodal Officer) or their representatives, the Developer shall rectify such errors.

17.4 Inspection and Testing

17.4.1 The whole of the Station Development Project and/or supply of materials, plant or equipment specified and provided in the Agreement in respect thereof or that may be necessary to be done in order to form and complete any part thereof shall be executed in the best and most substantial workman like manner with materials of the best and most approved quality of their respective kinds, agreeable to the particulars contained in or implied by the Specifications and as referred to in and represented by the approved Design & Drawings or in such other additional particulars, instructions and drawings as may be found requisite to be given during the progress of the works and to the entire satisfaction of Authority/Nodal Officer according to the instructions and directions which the Developer may from time to time receive from the Authority/Nodal Officer.

17.4.2 The materials, plant, and equipment utilised by the Developer, may be subjected to tests by means of such machines, instruments and appliances as the PMC may direct and wholly at the expense of the Developer. All materials, plant, and equipment and workmanship shall be as per the Agreement (including the Specifications) and in accordance with the PMC's instructions and shall be subjected to such tests as the PMC may direct. The Developer shall provide all such assistance, instruments, machines, labour and materials required for examining, measuring and testing any work and materials used. The Developer shall supply samples of material before incorporating in the works for testing as may be selected and required by the PMC. The sources of materials to be used in the works shall be intimated to the PMC and are subject to his approval. In furtherance of the foregoing, the Developer shall arrange for Authority/Nodal Officer and their representatives to have access to all places where manufacture or preparation of materials, plant or equipment is being undertaken, or construction activities are being carried out.

17.4.3 Without prejudice to the generality of the foregoing, no approval of Authority/Nodal Officer/PMC in respect of any part of the Station Development Project, the materials, plant or equipment (including any Provisional Sum Items), shall be deemed in any manner to relieve the Developer of his obligation to duly perform the Station Development in accordance with the Specifications, the other terms of the Agreement and Applicable Laws.

17.5 Removal of Improper work and materials

17.5.1 Authority/Nodal Officer/PMC or their duly authorised representatives shall be entitled to order from time to time:

- (a) the rejection and removal from the Station Development Land within the time specified in the order of any materials, plant or equipment which in his opinion are not in accordance with the Specifications (including approved Design & Drawings for the Station Development Project);
- (b) the substitution of proper and suitable materials, plant or equipment; and
- (c) the rejection and removal and proper re-execution, notwithstanding any previous tests thereof of any part of the Station Development Project which in respect of materials, plant or equipment or workmanship is, in their opinion, not in accordance with the Specifications.

17.5.2 Without prejudice to the foregoing, if the Developer fails to proceed promptly with the removal and replacement of rejected materials, plant and equipment and the correction of defective workmanship, Authority may, by contract with third parties or otherwise, replace such materials, plant and equipment or correct such workmanship and/or may terminate the Agreement, and the Developer shall be liable and reimburse Authority upon demand for all costs, expenses and damages incurred by Authority relating to such replacement or correction.

- 17.5.3 Without prejudice to the foregoing, the Nodal Officer shall have the right to instruct the Developer and/ or its Sub-Contractors for rectifying defects in materials, equipments workmanship, housekeeping, quality or the temporary or permanent works at any time while inspecting the Station Development Project. The Developer shall comply with such instructions.
- 17.5.4 After completion of the necessary repairs or replacements the relevant materials, plant equipment, and works shall be subject to further inspection, examination and testing by Authority and its designated consultants and representatives, all the costs and expenses of which shall be to the Developer's account.

17.6 Covering up of Works

- 17.6.1 In respect of the Station Development Project, or any materials or any other works relating to the Station Development Project, which PMC/Nodal Officer or their representatives are entitled to examine, inspect, measure and/or test, the Developer shall give prior notice to PMC, for not less than 3 (three) days, whenever any such Work is ready and before it is to be covered up in the earth, in bodies or walls, put out of sight, packaged for storage or transport, or otherwise to be placed beyond the reach for inspection. The PMC shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or give notice to the Developer that the PMC does not require to do so within 7 (seven) days after receipt of the Developer's notice for such examination, inspection, measurement or testing.
- 17.6.2 If the Developer fails to give such notice, it shall, if and when required by PMC/Nodal Officer, uncover the work and thereafter reinstate and make good, all at Developer's cost and expense. Authority shall be responsible for the its personnel's expenses in connection with inspection, examination and testing.

17.7 Costs of examination and reconstruction

17.7.1 Should it be considered necessary by Authority at any time before the issuance of the Completion Clearance of the Station Development Project, to make an examination of the Station Development Project already completed, by removing or tearing out same, the Developer shall on request promptly furnish all necessary facilities, labour and material for so doing.

17.7.2 All costs of removing and tearing out any completed part of the Station Development Project and the costs associated with its satisfactory reconstruction (including charges for services rendered in connection therewith) shall be to the account of Developer and not reimbursable, and the Developer shall not be entitled to any extension of time in respect thereof, except when upon removing or tearing such Work it is found by Authority to be in accordance with the Agreement and the notice for inspection was provided by the Developer prior to covering up of the said works, in accordance with the Article 17.6 above, in which case the Developer shall be entitled, to submit, within 5 (five) days, a preliminary change order in accordance with Article 23.2 for a determination of an adjustment to the Consideration/ adjustment of the Construction Period.

17.8 Works in vicinity of underground signalling, electrical and telecommunication cables

17.8.1 The Developer agrees that some portion of the works in connection with the Station Development Project may require extensive digging work near the running track, in close vicinity of the working S&T/optical fibre cables carrying vital safety circuits as well as electrical cables feeding the power supply to Cabins. ASM room, RRI Cabin, Intermediate Block Huts (IBH) etc. Similarly, such works may also impact any existing, signalling and telecommunication works, including cables or casting of foundations for the erection of signal posts etc. The Developer accordingly agrees that while carrying out any works in the vicinity of working signalling, telecommunication and electrical cables, the Developer shall comply with such special procedures or requirements as may be specified in the Specifications or as may otherwise be prescribed by Authority (or the

relevant railway administration) from time to time.

17.8.2 In the event that, in the course of undertaking any works in relation to the Station Development Project, any damage is caused to any existing signalling, electrical or telecommunication cables or materials, the Developer shall be required to fully indemnify the Indemnified Parties (or where the works or materials damaged belong to a railway administration, indemnify such railway administration), against any and all Liabilities, loss etc., suffered by or incurred by or caused to any of the Indemnified Parties on account of or arising out of the works undertaken by the Developer.

17.8.3 In addition, in order to minimize any impact on the existing Railway assets, an inventory of all works, assets and materials at the Station Development Land prior to the commencement of the Station Development Project shall form a part of the handing over note for the Station Development Land (as executed in accordance with Article 11.4).

17.8.4 Without prejudice to the terms of such handing over note, it shall be the Developer's obligation to ensure that no damage or loss is caused to any of the existing assets, works or materials at the Station Development Land in the course of the Station Development Project. In the event of any such loss or damage being caused to any existing asset, work or material at the Station Development Land, the Developer shall keep the Indemnified Parties fully indemnified in respect of the same.

17.8.5 In addition, the Developer agrees that any existing assets, works or materials at the Station Development Land which are removed by the Developer in the course of, or in connection with the Station Development Project, shall be delivered and deposited by the Developer, at its own cost and expense to such stores or sheds, as Authority may indicate.

17.9 Relocation of Operational and Passenger Amenities

17.9.1 Where any railway operational offices, passenger amenities etc. are required to be temporarily shifted in order to undertake works in relation to the Station Development Project, the same shall be undertaken by the relevant railway administration (or where approved by the relevant railway

administration, by the Developer), at the cost and expense of the Developer. It is agreed that any such temporary shifting shall be undertaken strictly in accordance with the approved works programme for the Station Development Project and the phasing Handover Plan– Station Development Land approved by Authority.

17.10 Schedule for the Station Development Project

17.10.1 The Developer agrees and acknowledges that the entire Station Development Project shall be undertaken in accordance with the Project Schedule, and in a manner that ensures that each of the Key Dates set out in **Schedule 4** (*Project Schedule*) are duly met. In the event of a failure of the Developer to achieve any key milestone with respect to the Station Development Project by the relevant date of achievement thereof, the Developer would be subject to the levy of liquidated damages in accordance with Article 12, and **Schedule 4** (*Project Schedule*).

17.11 Defects Liability

17.11.1 The Defects Liability Period in respect of the Station Development Project shall commence on and from the date of the issuance of the Completion Clearance in respect of the Station Development Project. Provided that where the Nodal Officer has issued a Completion Clearance with respect to any part of the Station Development Project before the completion of the whole of the works or with respect to any substantial part of the Station Development Project which has been both completed to the satisfaction of the Nodal Officer and occupied or used by Authority (or its nominee), then the Defects Liability Period of such part shall commence from the date of such certificate.

17.11.2 The Completion Clearance in respect of the Station Development Project shall not absolve the Developer from his liability to make good any defects, imperfections, shrinkages or faults which may appear during the Defects Liability Period arising in the opinion of the Nodal Officer from materials, plant or equipment or workmanship not in accordance with the Design & Drawings or Specifications, or instructions of the Nodal Officer, which defects, imperfections, shrinkages or faults shall upon the direction

in writing of the Nodal Officer be amended and made good by the Developer at his own cost; and in case of default on the part of Developer, the Nodal Officer may employ labour and materials or appoint his own contractor to amend and make good such defects, imperfections, shrinkages and faults and all expenses consequent thereon and incidental thereto shall be borne by the Developer and shall be recoverable from the Developer.

17.12 Existing commercial operations

17.12.1 The Developer acknowledges that the commercial establishments and operations are located on the Station Development Land, which shall be identified in greater detail in the Joint Inventory. The Developer agrees that it shall undertake the works on the Station Development Land in a manner that causes minimal interference to, or impedes the normal operations of such commercial establishments and operations.

17.13 Additional Compliances

17.13.1 Without prejudice to the other terms of the Agreement and in addition to the Station Development Project being constructed in a manner that complies with the Specifications (including those set out in **Schedule 9** (*Standards and Specifications*), the Developer shall ensure that the Station Development Project complies with such additional conditions relating to quality and workmanship, material and equipment specifications, precautions for working on platforms, near OHE and in passenger areas, temporary arrangements for passenger movements during construction etc, as set forth in greater detail in the Specifications.

ARTICLE 18: DEVELOPMENT OF THE REDEVELOPMENT PROJECT

18.1 Development Obligation for Redevelopment Project

18.1.1 The Developer shall provide, furnish and perform, on a turnkey basis all necessary design, Detailed Design & Drawings, engineering, procurement, supplies, installation, erection, construction, testing, commissioning activities and all other works required in respect of the Redevelopment Project, and undertake all necessary rectification and remedial services, activities and work relating to defects and deficiencies during the Defects Liability Period, and all necessary maintenance of the works during the Maintenance Period, in each case in accordance with the Specifications for the Redevelopment Project.

18.2 Adherence to Specifications and Drawings

18.2.1 The whole of the works in respect of the Redevelopment Project shall be executed in perfect conformity with the Specifications and approved Design & Drawings and the approved works programme for the Redevelopment Project.

18.2.2 If Developer performs any works in a manner contrary to such Specifications, approved Design & Drawings, the approved works programme for the Redevelopment Project or any of them and without such reference to the Nodal Officer it shall bear all the costs arising or ensuing therefrom and shall be responsible for all loss to Authority or the Railway.

18.3 Setting out of Works

18.3.1 The Developer shall be responsible for the correct setting out of all works on the ground and compliance with the approved Design & Drawings with respect to the Redevelopment Project. The Developer shall provide all facilities like labour and instruments and shall co-operate with the PMC (and/ or Nodal Officer) and their representatives to check the setting out of the Redevelopment Project. If instructed by the PMC (and/ or Nodal Officer) or their representative, the Developer shall rectify such errors.

18.4 Inspection and Testing

18.4.1 The whole of the Redevelopment Project and/or supply of materials, plant or equipment specified and provided in the Agreement in respect thereof or that may be necessary to be done in order to form and complete any part thereof shall be executed in the best and most substantial workman like manner with materials of the best and most approved quality of their respective kinds, agreeable to the particulars contained in or implied by the Specifications and as referred to in and represented by the approved Design & Drawings or in such other additional particulars, instructions and drawings as may be found requisite to be given during the progress of the works and to the entire satisfaction of PMC/Nodal Officer according to the instructions and directions which the Developer may from time to time receive from the PMC/Nodal Officer.

18.4.2 The materials, plant, and equipment utilised by the Developer, may be subjected to tests by means of such machines, instruments and appliances as the PMC may direct and wholly at the expense of the Developer. All materials, plant, and equipment and workmanship shall be as per the Agreement (including the Specifications) and in accordance with the PMC instructions and shall be subjected to such tests as the PMC may direct. The Developer shall provide all such assistance, instruments, machines, labour and materials required for examining, measuring and testing any work and materials used. The Developer shall supply samples of material before incorporating in the works for testing as may be selected and required by the PMC. The sources of materials to be used in the works shall be intimated to the PMC and are subject to his approval.

18.4.3 In furtherance of the foregoing, the Developer shall arrange for PMC/Nodal Officer and their representatives to have access to all places where manufacture or preparation of materials, plant or equipment is being undertaken, or construction activities are being carried out.

18.4.4 Without prejudice to the generality of the foregoing, no approval of PMC/Nodal Officer in respect of any part of the Redevelopment Project, the materials, plant, or equipment (including any Provisional Sum Items), shall be deemed in any manner to relieve the Developer of his obligation to duly perform the Redevelopment in accordance with the Specifications, the other terms of the Agreement and Applicable Laws.

18.5 **Removal of Improper work and materials**

18.5.1 Authority/Nodal Officer/PMC or their duly authorised representatives shall be entitled to order from time to time:

- (a) the rejection and removal from the Redevelopment Land within the time specified in the order of any materials, plant or equipment which in his opinion are not in accordance with the Specifications (including approved Design & Drawings for the Redevelopment Project);
- (b) the substitution of proper and suitable materials, plant or equipment; and
- (c) the rejection and removal and proper re-execution, notwithstanding any previous tests thereof of any Redevelopment Project which in respect of materials, plant or equipment or workmanship is, in their opinion, not in accordance with the Specifications.

18.5.2 Without prejudice to the foregoing, if the Developer fails to proceed promptly with the removal and replacement of rejected materials, plant and equipment and the correction of defective workmanship, Authority may, by contract with third parties or otherwise, replace such materials, plant and equipment or correct such workmanship and/or may terminate the

Agreement, and the Developer shall be liable and reimburse Authority upon demand for all costs, expenses and damages incurred by Authority relating to such replacement or correction.

18.5.3 Without prejudice to the foregoing, the Nodal Officer shall have the right to instruct the Developer and/ or its Sub-Contractors for rectifying defects in materials, equipments workmanship, housekeeping, quality or the temporary or permanent works at any time while inspecting the Redevelopment Project. The Developer shall comply with such instructions.

18.5.4 After completion of the necessary repairs or replacements the relevant materials, plant equipment, and works shall be subject to further inspection, examination and testing by Authority and its designated consultants and representatives, all the costs and expenses of which to the Developer's account.

18.6 Covering up of Works

18.6.1 In respect of the Redevelopment Project, or any materials or any other works relating to the Redevelopment Project, which Authority/ PMC/ Nodal Officer or their representatives are entitled to examine, inspect, measure and/or test, the Developer shall give notice to PMC whenever any such Work is ready and before it is to be covered up in the earth, in bodies or walls, put out of sight, packaged for storage or transport, or otherwise to be placed beyond the reach for inspection. The PMC shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or give notice to the Developer that the PMC does not require to do so within 7 (seven) days after receipt of the Developer's notice for such examination, inspection, measurement or testing.

18.6.2 If the Developer fails to give such notice, it shall, if and when required by Authority/ PMC/ Nodal Officer, uncover the work and thereafter reinstate and make good, all at Developer's cost and expense. Authority shall be responsible for the Authority's personnel's expenses in connection with inspection, examination and testing.

18.7 Costs of examination and reconstruction

18.7.1 Should it be considered necessary or advisable by Authority at any time before the issuance of the Completion Clearance of the Redevelopment

Project to make an examination of the part of the Redevelopment Project already completed, by removing or tearing out same, Developer shall on request promptly furnish all necessary facilities, labour and material for so doing.

18.7.2 All costs of removing and tearing out any completed part of the Redevelopment Project and the costs associated with its satisfactory reconstruction (including charges for services rendered in connection therewith) shall be for the account of Developer and not reimbursable, and the Developer shall not be entitled to any extension of time in respect thereof, except when upon removing or tearing such Work it is found by Authority to be in accordance with the Agreement and the notice for inspection was provided by the Developer prior to covering up of the said works, in accordance with the Article 18.6 above, in which case Developer shall be entitled, to submit, within 5 (five) days, a preliminary change order in accordance with Article 23.2 for a determination of an adjustment to the Consideration/ adjustment of the Construction Period.

18.8 Works in vicinity of underground signalling, electrical and telecommunication cables

18.8.1 The Developer agrees that some portion of the works in connection with the Redevelopment Project may require extensive digging work near the running track, in close vicinity of the working S&T cables carrying vital safety circuits as well as electrical cables feeding the power supply to cabins, ASM room, RRI Cabin, Intermediate Block Huts (IBH) etc. Similarly, such works may also impact any existing, signalling and telecommunication works, including cables or casting of foundations for the erection of signal posts etc. The Developer accordingly agrees that while carrying out any works in the vicinity of working signalling, telecommunication and electrical cables, the Developer shall comply with such special procedures or requirements as may be specified in the Specifications or as may otherwise be prescribed by Authority (or the relevant railway administration) from time to time.

18.8.2 In the event that, in the course of undertaking any works in relation to the Redevelopment Project, any damage is caused to any existing signalling, electrical or telecommunication cables or materials, the Developer shall be required to fully indemnify the Indemnified Parties (or where the works or materials damaged belong to a railway administration, indemnify such railway administration), against any and all Liabilities, loss etc., suffered by or caused to or incurred by on account of or arising out of the works undertaken by the Developer.

18.8.3 In addition, in order to minimize any impact on the existing Railway assets, an inventory of all works, assets and materials at the Redevelopment Land prior to the commencement of the Redevelopment Project, shall form a part of the handing over note for the Redevelopment Land (as executed in accordance with Article 11.3). Without prejudice to the terms of such handing over note, it shall be the Developer's obligation to ensure that no damage or loss is caused to any of the existing assets, works or materials at the Redevelopment Land in the course of the Redevelopment Project. In the event of any such loss or damage being caused to any existing asset, work or material at the Redevelopment Land, the Developer shall keep the Indemnified Parties fully indemnified in respect of the same. In addition, the Developer agrees that any existing assets, works or materials at the Redevelopment Land which are removed by the Developer in the course of, or in connection with the Redevelopment Project, shall be delivered and deposited by the Developer, at its own cost and expense to such stores or sheds, as Authority may indicate.

18.9 Compliance with conditions

18.9.1 In addition to the Redevelopment Project being constructed in a manner that complies with the Specifications (including those set out in **Schedule 2** (*Standards and Specifications*), the Developer shall ensure that the Redevelopment Project complies with such additional conditions relating to quality and workmanship, material and equipment specifications, precautions for working on platforms, near OHE and in passenger areas,

temporary arrangements for passenger movements during construction etc., as set forth in greater detail in the Specifications.

18.10 Schedule for the Redevelopment Project

18.10.1 The Developer agrees and acknowledges that the entire Redevelopment Project shall be undertaken in accordance with the Project Schedule, and in a manner that ensures that each of the Key Dates set out in **Schedule 4** (*Project Schedule*) are duly met. In the event of a failure of the Developer to achieve any Key Date/ milestone with respect to the Redevelopment Project by the relevant date of achievement thereof, the Developer would be subject to the levy of liquidated damages in accordance with Article 12.1.2, and **Schedule 4** (*Project Schedule*).

18.11 Defects Liability

18.11.1 The Defects Liability Period in respect of the Redevelopment Project, shall commence on and from the date of the issuance of the Completion Clearance in respect thereof. Provided that the Nodal Officer has issued a Completion Certificate to any part of the Redevelopment Project before the completion of the whole of the works or with respect to any substantial part of the Redevelopment Project which has been both completed to the satisfaction of the Nodal Officer and occupied or used by Authority (or its nominee), then the Defects Liability Period of such part shall commence from the date of such certificate.

18.11.2 The Completion Certificate in respect of the Redevelopment Project shall not absolve the Developer from his liability to make good any defects, imperfections, shrinkages or faults which may appear during the Defects Liability Period arising in the opinion of the Nodal Officer from materials, plant or equipment or workmanship not in accordance with the Design & Drawings or Specifications, or instructions of the Nodal Officer, which defects, imperfections, shrinkages or faults shall upon the direction in writing of the Nodal Officer be amended and made good by the Developer at his own cost; and in case of default on the part of Developer the Nodal Officer may employ labour and materials or appoint its own contractor to amend and make good such defects, imperfections, shrinkages and faults

and all expenses consequent thereon and incidental thereto shall be borne by the Developer and shall be recoverable from the Developer.



ARTICLE 19: COMMERCIAL DEVELOPMENT PROJECT

19.1 Development Obligation for Commercial Development Project

19.1.1 The Developer shall design, prepare drawings, develop, construct, operate and maintain the Commercial Development Project, in accordance with the Good Industry Practice for the Commercial Development Project, and the other terms of the Agreement and in compliance with all Applicable Laws and Applicable Permits.

19.2 Preparation & Approval of the Commercial Development Plan for the Commercial Development Project

19.2.1 Before the start of construction of the Commercial Development Project, the Developer shall prepare a Commercial Development Plan, specifying different phases in which the Developer proposes to construct the Commercial Development Project, subject however to the Commercial Development Plan ensuring that the development of the Commercial Development Project would be in compliance with the Project Schedule, the Specifications and Applicable Laws. Once approved by the Nodal Officer, the respective dates specified for such phase in the Commercial Development Project, shall be deemed to be the Guaranteed Date for that phase of the Commercial Development Project.

19.2.2 The phasing of the Commercial Development Project pursuant to any Commercial Development Plan shall only be permitted with regard to separate buildings and not different floors or levels of the same building, and further the overall number of phases of the Commercial Development Project shall be restricted to a maximum number as specified in the SCDA.

19.2.3 Any development of the Commercial Development Project shall be undertaken strictly in accordance with the approved Commercial Development Plan (subject to such modifications and amendments as may be specified and/ or approved by Nodal Officer).

19.3 Adherence to Specifications and Drawings

19.3.1 The whole of the works in respect of the Commercial Development Project shall be executed using due care and diligence in a professional manner, using sound engineering, design and project management principles and supervisory procedures in accordance with Good Industry Practice and in perfect conformity with the Specifications and approved Design & Drawings for the Commercial Development Project and the Commercial Development Plan.

19.3.2 If Developer performs any works in a manner contrary to such Specifications, approved Design & Drawings, the Commercial Development Plan or any of them and without such reference to the Nodal Officer it shall bear all the costs arising or ensuing therefrom and shall be responsible for all loss to Authority or the Railway.

19.4 Approval of Detailed Design & Drawings

19.4.1 The Developer shall develop and prepare Detailed Design & Drawings for the Commercial Development Project and proposed developments at the Site, in compliance with the requirements of the Agreement, Applicable Laws and Applicable Permits.

19.4.2 The Developer shall submit the following elements of the Detailed Design & Drawings of the Commercial Development Project to the Nodal Officer for his approval, prior to submitting the same to the concerned Government Authority for obtaining Applicable Permits:

- (a) In respect of the Commercial Development on Reserved Railway Land:
 - (i) General arrangement drawings;
 - (ii) Floor plans in respect of the entire Built Up Area proposed to be constructed;
 - (iii) Architectural elevations and facades; and
 - (iv) Utility diversion/ relocation requirements for such part of the Site.

(b) In respect of the Commercial Development on airspace (if any comprised in the Site) above existing Railway building/station/track / proposed Station Development Project or Redevelopment Project, in addition to the requirements specified in Article 19.4.1 (which shall also be applicable in relation to the Commercial Development on airspace (if any comprised in the Site)), the following additional requirements shall also be submitted:

- (i) Construction methodology;
- (ii) Design of main structural elements;
- (iii) Approval of the entire Detailed Design & Drawings of Interfacing Structures and Areas, which shall be undertaken in the same manner and to the same extent as prescribed in relation to the Mandatory Project.

19.4.3 The Nodal Officer shall be entitled to either approve such Detailed Design & Drawings or ask for more details within 30 (thirty) days of submission of the Detailed Design & Drawings for the Commercial Development Project. If the Nodal Officer fails to reply to the Developer within this period, the Detailed Design & Drawings for the Commercial Development Project shall be deemed to have been approved by the Nodal Officer.

19.4.4 If the Nodal Officer asks for more details, the Developer shall furnish these details and within 15 (fifteen) days of furnishing such details the Nodal Officer shall have to approve or reject the Detailed Design & Drawings for the Commercial Development Project. However, Nodal Officer may give conditional approval subject to fulfilment of certain conditions by the Developer.

19.4.5 Once approved by the Nodal Officer, the Developer shall not make any alterations or additions to the approved Detailed Design & Drawings for the Commercial Development Project without prior approval in writing of the Nodal Officer (other than required pursuant to requirements of other Government Authority), and shall be required to undertake the Commercial Development Project in accordance with such approved Detailed Design

and Drawings for the Commercial Development Project, and the Commercial Development Plan.

19.5 No certification of conformity

19.5.1 The approval by the Nodal Officer in terms of Article 19.4 above shall in no event amount to certifying the conformity of Detailed Design & Drawings with Applicable Law or discharge the Developer from its responsibility of obtaining Applicable Permits. After obtaining the Applicable Permits the Developer, shall submit a certified copy of such Applicable Permit to the Nodal Officer.

19.6 Construction of the Commercial Development Project

19.6.1 The Developer shall undertake and complete the construction of the Commercial Development Project, in accordance with the Project Schedule and the approved Commercial Development Plan, and in any event prior to the Guaranteed Date of completion.

19.6.2 Upon completion of construction of the Commercial Development Project and receipt of all Applicable Permits for commercial operation/usage, the Developer shall apply for a Completion Clearance and Completion Certificate, as the case may be, for the Commercial Development Project, in accordance with Article 22 hereof.

19.6.3 The Developer shall not start Commercial Operation of the concerned Commercial Development Project or permit usage of the Asset and the Commercial Development Project Utilities until the Developer has received the Completion Clearance or the Provisional Completion Clearance (subject to Article 22) and Completion Certificate, as the case may be, in respect of the concerned Commercial Development Project.

19.7 Inspection of the Site

19.7.1 Authority shall be entitled to, but not obliged to do so, without being required to give prior written notice to the Developer, inspect the Site through their duly authorized representative. Provided however, the duly authorized representatives of Authority shall not interfere with or prevent

the Developer's officials from discharging their functions. The Developer shall provide all necessary assistance including accompanying the Authority's representative during such inspections, providing information, plans and other details of the Commercial Development Project as asked for by the Authority's representative. Based on such inspections, Authority may, without being obliged to do so, issue, if found necessary, instructions to the Developer for addressing the deficiencies noted at the Site in terms of the Agreement. The Developer shall comply with such instructions within 30 (thirty) days of receipt of such instruction.



ARTICLE 20: MONITORING OF CONSTRUCTION OF MANDATORY PROJECT

20.1 Provision of Development Report

20.1.1 The Parties agree that the Developer shall provide to the PMC, quarterly progress reports (“**Development Report**”), in pre-agreed performa, indicating the progress of the various works in relation to the Mandatory Project, and the status of compliance with the approved plans (including the Handover Plan – Station Development Land, the Handover-Plan Redevelopment Land, and the approved works programmes for the Station Development Project and the Redevelopment Project) and the Project Schedule. Such Development Report, shall also set out, where applicable, the Developer’s proposal in relation to rectification of any non-compliance with the said plans and the Project Schedule.

20.2 Progress Report and Meetings

20.2.1 The Developer shall submit to the PMC and Authority, on the last business day of each week, a progress report (the “**Progress Report**”), in pre-agreed performa, in respect of the Mandatory Project. Such Progress Report shall be a 3 (three) week rolling plan, setting out the progress of the Mandatory Project (and each component thereof), in accordance with the approved works programme for the Station Development Project, Redevelopment Project, the Handover Plan – Station Development Land, and the Handover Plan – Redevelopment Land for the week ending on the day of such Progress Report, as also the proposed implementation programme for the Mandatory Project for the succeeding three weeks.

20.2.2 The Developer shall on the first business day of each week (or such other date as agreed to between Authority and the Developer), make available his Project Manager, as also all other personnel deemed necessary or relevant by the Developer (and/ or otherwise requested by the PMC/ Authority), for meetings with the representatives of Authority and PMC, at the Project Land (or other location designated by Authority), for the purposes of providing Authority and the PMC with a detailed update on the status of the completion of the works in respect of the Mandatory Project (and the relevant Progress

Report), and answering all queries that Authority/ PMC may have in this regard.

20.2.3 In addition to the foregoing, the Developer shall on such date, in each month, as is notified by Authority in this regard, make available his Project Manager, as also all other personnel deemed necessary or relevant by the Developer (and/ or otherwise requested by the PMC/ Authority), for meetings with the representatives of Authority and PMC, at the offices of Authority (or other location designated by Authority), for the purposes of providing Authority and the PMC with a detailed update on the status of the completion of the works in respect of the Mandatory Project (and the relevant Progress Reports for the applicable period), and answering all queries that Authority/ PMC may have in this regard. Provided that upon approval of substantive elements of the Detailed Design & Drawings for the Project (excluding the approval of the working drawings), Authority may, extend the period between the meetings contemplated under this Article 20.2.3, to a quarterly period (or such other period as may be deemed fit by Authority, at its discretion).

20.3 **Safety Meeting**

20.3.1 The Developer shall on the second business day of each week (or such other date as agreed to between Authority and the Developer), make available his safety manager, as also all other personnel deemed necessary or relevant by the Developer (and/ or otherwise requested by the PMC/ Authority), for meetings with the representatives of Authority (including the Nodal Officer and the Safety Consultant) and PMC, at the offices of the PMC on the Project Land (or other location designated by Authority), for the purposes of providing Authority and the PMC with a detailed update on the status of the adherence to of the Project (and the works thereto) to the safety requirements set out under the Agreement, and Applicable Laws, and highlighting the breaches and/ or potential breaches thereof, and the remedial action and preventive action taken or required to be taken in respect thereof, and answering all queries that Authority/ PMC/ Safety Consultant may have in this regard.

20.3.2 In addition to the foregoing, the Developer shall in the first week of each month (or such other date as is agreed to between Authority and the Developer), conduct a safety meeting at its offices on the Project Land, involving his Project manager, safety manager, as also all other personnel deemed necessary or relevant by the Developer (and/ or otherwise requested by the PMC/ Authority), to assess the adherence to of the Project (and the works thereto) to the safety requirements set out under the Agreement, and Applicable Laws, and highlighting the breaches and/ or potential breaches thereof, and the remedial action and preventive action taken or required to be taken in respect thereof. Authority, PMC and the Safety Consultant shall be entitled to attend any such meeting, and the Developer shall be required to respond to queries raised by Authority/ PMC/ Safety Consultant in respect of matters discussed/ required to be discussed at such meeting.

20.4 QA & Environmental Meeting

20.4.1 The Developer shall on the first business day of each month (or such other date as agreed to between Authority and the Developer), make available his environmental manager and his quality assurance manager, as also all other personnel deemed necessary or relevant by the Developer (and/ or otherwise requested by the PMC/ Authority), for meetings with the representatives of Authority and PMC, at the offices of the PMC on the Project Land (or other location designated by Authority), for the purposes of providing Authority and the PMC with a detailed update on the status of the adherence to of the Project (and the works thereto) to the quality assurance requirements and the environmental obligations set out under the Agreement, and Applicable Laws, and highlighting the breaches and/ or potential breaches thereof, and the remedial action and preventive action taken or required to be taken in respect thereof, and answering all queries that Authority/ PMC may have in this regard.

20.5 Rate of Progress

20.5.1 If the progress of work has been delayed for any reason / act which does not entitle the Developer to get an extension of time for construction under the Agreement (which for avoidance of doubt shall not include any events for

which extension of time may be granted by Authority at its discretion, consequent to a default by the Developer), the rate of progress of the works in relation to the Project, is at any time, in the opinion of the PMC (including, without limitation, pursuant to any inspection conducted under the Agreement or pursuant to the Development Report, the Progress Report, or any meeting conducted pursuant to Article 20.2, 20.3 or 20.4 above) too slow to ensure timely completion, of the said works as per the applicable Project Schedule, the PMC may notify the Developer in writing. Provided that, notwithstanding the foregoing, the Developer shall be required, as a part of the Progress Report and in meetings conducted pursuant to the provisions under Article 20.2, 20.3 or 20.4 above, be required to provide to Authority and the PMC, the details of actual/ potential failures to adhere to the Project Schedule, and all steps taken/ proposed to be taken by the Developer to rectify the same, including without limitation, applicable additional resource mobilisation in terms of equipment, materials and/ or manpower. The Developer shall, upon such notice by the PMC, and/ or intimation to the PMC (as contemplated under this Article), take such steps as are necessary, or in default of taking such steps, take such steps as the PMC may reasonably require in writing, to expedite the progress so as to complete the relevant part of the works or any portion thereof, in time, or to otherwise achieve the Project Schedule. The Developer shall not be entitled to any additional payment and/ or any adjustment in the Consideration, for taking such steps.

ARTICLE 21: COMPLETION CLEARANCE FOR MANDATORY PROJECT

21.1 Tests

- 21.1.1 At least 30 (thirty) days prior to the likely completion of the Redevelopment Project and/or the Station Development Project, or any part thereof, the Developer shall notify the PMC (with a copy to the Nodal Officer and Authority/ Railways) of its intent to subject the said part of the Mandatory Project to Tests.
- 21.1.2 The date and time of each of the Tests shall be determined by the PMC in consultation with the Developer, and notified to the Nodal Officer and the Railway, who may designate their representatives to witness the Tests. In the event of the Developer and the PMC failing to mutually agree on the dates for conducting the Tests, the PMC shall fix the dates by not less than 10 (ten) days notice to the Developer.
- 21.1.3 The Developer shall provide such assistance as the PMC may reasonably require for conducting the Tests.
- 21.1.4 All Tests shall be conducted in accordance with **Schedule 33** (Tests). The PMC shall observe, monitor and review the results of the Tests to determine compliance of the Mandatory Project with Specifications and if it is reasonably anticipated or determined by the PMC during the course of any Test that the performance of the Mandatory Project or any part thereof does not meet the Specifications, it shall have the right to suspend or delay such Test and require the Developer to remedy and rectify the defects or deficiencies.
- 21.1.5 Upon completion of each Test, the PMC shall provide to the Developer, Authority and Nodal Officer, copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the PMC may require the Developer to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Mandatory Project with the Specifications.

21.2 Completion Clearance

21.2.1 Upon completion of Redevelopment Project and/ or the Station Development Project, and the PMC determining the Tests to be successful, it shall intimate the Nodal Officer accordingly, and if the same is to the satisfaction of the Nodal Officer, the Nodal Officer shall forthwith issue to the Developer and Authority the relevant Completion Clearance substantially in the form set forth in **Schedule 12** (*Completion Clearance*).

21.3 Rescheduling of Tests

21.3.1 If the PMC certifies to the Authority and the Developer that it is unable to determine whether the Mandatory Project has satisfactorily passed the Tests, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Developer shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

21.4 Handover of the Mandatory Assets and Mandatory Project Utilities

21.4.1 Upon the Completion Clearance being issued in respect of the Mandatory Project, or any part thereof, the possession of the Mandatory Assets and Mandatory Project Utilities and all other Mandatory Project in relation to the Mandatory Project (or such part thereof) shall forthwith be transferred and handed over to Authority (or its nominee), free and clear of all temporary works, Developer's equipment, waste material, rubble, and other plant, equipment and material not forming a part of the Mandatory Project (save and except to the extent specifically permitted by Authority).

21.4.2 In the event that the aforesaid handover of the possession of the Mandatory Assets and Mandatory Project Utilities (or relevant part thereof), is not completed by the Developer within a fortnight from the relevant Completion Date of Mandatory Project (such part thereof), Authority shall be entitled to enter the Mandatory Project, and take over possession of the same, at the risk and expense of the Developer.

21.5 Entry into Service

21.5.1 The Mandatory Project or part thereof shall be deemed to be complete when the Completion Clearance, is issued in respect thereof, under the provisions of this Article 21, and accordingly the maintenance obligations of the Developer under Article 25 shall commence from such date.



ARTICLE 22: COMPLETION CLEARANCE – COMMERCIAL DEVELOPMENT PROJECT

- 22.1 Upon completion of construction of the Commercial Development Project and receipt of all Applicable Permits for commercial operation/usage, the Developer shall apply for a Completion Clearance for the Commercial Development Project, by submitting the certified copies of all such Applicable Permits together with completion 'as built drawings' of Commercial Development Assets and Commercial Development Project Utilities to the Nodal Officer.
- 22.2 The Nodal Officer shall, within 30 (thirty) days of such request either issue the Completion Clearance for the Commercial Development Project (which shall be granted with the concurrence of the Authority) or convey the shortcomings to the Developer, which the Developer shall rectify and send fresh request to the Nodal Officer. If the Nodal Officer fails to respond to the Developer's request within 30 (thirty) days, the Completion Clearance for the Commercial Development Project shall be deemed to have been issued by the Nodal Officer. Provided that the Developer shall not be issued a Completion Clearance for the Commercial Development Project (or any part thereof), till such time as the Completion Clearance has not been obtained by the Developer in respect of the Station Development Project and the Redevelopment Project.
- 22.3 The Developer shall not start Commercial Operation of the Commercial Development Project or permit usage of the Commercial Development Assets and the Commercial Development Project Utilities until the Developer has received the Completion Clearance for the Commercial Development Project.
- 22.4 In exceptional cases when the Developer is not able to obtain all Applicable Permits from concerned Government Authority in time while the Commercial Development Project is ready for Commercial Operation, the Developer may request the Nodal Officer for issuance of a Provisional Completion Clearance for the Commercial Development Project based on available Applicable Permits obtained by the Developer together with completion 'as built drawings' for the Commercial Development Project. The Nodal Officer may consider the request and issue such a

Provisional Completion Clearance but at the Developer's risks and costs, including any violation of any requirements of Applicable Permits and Applicable Laws.

- 22.5 In case of phased development, the Developer shall obtain a Completion Clearance from the Nodal Officer for each phase of the Commercial Development Project before starting the Commercial Operation of such phase.



ARTICLE 23: VARIATIONS

23.1 Variations

23.1.1 All amendment, modifications, alterations, deletions or additions to the Mandatory Project and the obligations of the Parties in relation thereto (each a “**Variation**”), shall only be undertaken in accordance with this Article, and the Developer shall not make any such Variation (or undertake any works pursuant thereto), except pursuant to a Change Order, as prescribed under this Article. The Parties agree and acknowledge that any such Variation and/ or Change Order shall not in any way invalidate or vitiate the Agreement. Provided that any non-material alteration to the Mandatory Project or the obligations of the Parties in relation thereto, shall, at the discretion of Authority, be undertaken in accordance with Article 49.12, and the provisions of this Article 23 shall not be applicable thereto. Provided further that if the construction and/ or manufacturing, or works in respect of the Project, are not in accordance with the Agreement, the rectification thereof, carried out in terms of the provisions of the Agreement shall not constitute a Variation.

23.2 Authority's Variation

- 23.2.1 Authority shall have the right at any time by written notice to the Developer to require a Variation and the Developer agrees to effect such Variations as Authority may from time to time request.
- 23.2.2 Any request by Authority for a Variation shall be delivered to the Developer in writing and shall be sufficiently definite and detailed to give Developer an adequate basis on which to prepare a preliminary change order pursuant to Article 23.2.
- 23.2.3 Upon receipt of Authority's request for a Variation, Developer shall prepare a preliminary change order in accordance with Article 23.4, and deliver the same to Authority within 10 (ten) days time following Developer's receipt of such request.

23.3 Developer's Variation

- 23.3.1 The Developer may, at any time, submit to Authority, a written proposal for a Variation, which in the Developer's opinion, will reduce the cost of construction, manufacture, installation, or operating the Project or improve the efficiency or value to Authority of the completed Project, or otherwise be of benefit to Authority. Such proposal shall be accompanied by a preliminary change order in accordance with Article 23.4 below, and a confirmation that the variation would not result in any reduction to the standard, or quality of the Project, or the performance of the Developer's obligation under the Agreement.

23.4 Preliminary Change Orders

23.4.1 Each preliminary change order submitted by Developer to Authority pursuant to Article 23.2 or Article 23.3, shall be in writing and be accompanied by such information and data as will be reasonably required by Authority to evaluate properly the proposed execution of the work in question, the effect, if any, on the Mandatory Project, the Project Schedule and such other matters as Authority shall request, and shall include the following:

- (a) a description of the proposed design and/ or work to be performed and the programme for its execution;
- (b) the Developer's proposal for any necessary modifications to the Mandatory Project and/or work programme for the Mandatory Project (if any); and
- (c) the Developer's proposal for the adjustment to the Consideration and/ or the Project Schedule (if any).

23.4.2 Authority shall reject or approve at its sole discretion each preliminary change order as expeditiously as proper consideration of the nature of the Variation may reasonably permit.

23.4.3 The cost of all work, and other expenses involved in preparing the preliminary change order (including the information and data required to accompany such preliminary change order) and for any additional analytical or investigative work requested by Authority shall be borne by the Developer, and Authority shall not have any liability in respect thereof.

23.5 Change Orders

23.5.1 Except as provided in Article 23.6, Developer shall not act upon any preliminary change order unless the Parties shall have executed a written change order (which may be the preliminary change order signed by both Parties) incorporating the changes in question and providing for any change in the Project Schedule, any increase or reduction of the Consideration in

each case resulting from such Variation (any such executed and written change order, the “**Change Order**”).

23.5.2 Any adjustment of the Consideration, consequent to any Change Order, shall be based on the Estimated Project Cost.

23.6 Performance of Change Pending agreement

23.6.1 If Authority and Developer fail to agree on the effect of a change upon the Consideration, the Project Schedule and as a result a Change Order referred to in Article 23.5 is not executed, Authority may nevertheless require Developer to perform the said Variation as changed by delivering to Developer a Change Order signed by Authority and Developer shall complete all work specified in such Change Order and the dispute shall be resolved as provided in Article 41.

23.6.2 The Developer's performance of the Variation as changed shall not prejudice either party's position regarding the effects of such Variation.

23.7 Effect of Variation

23.7.1 The Developer agrees and acknowledges that no alteration in the Consideration or any adjustment to the Project Schedule shall be granted with respect to same if:

- (a) The Variation is necessary in order for Developer to satisfy its responsibility to make the Mandatory Project operable and capable of performing as contemplated under the Agreement and as specified in the Specifications, and to ensure that the Mandatory Project when completed, and the Work performed, is in accordance with the Agreement;
- (b) The Variation is required because of delays in the Project Schedule attributable to Developer, or any other default of the Developer, or relate to any rectification or remedy of defects or deficiencies required under the Agreement;

- (c) The Variation is required because of a breach of any of the representations and warranties of the Developer under the Agreement;
or
- (d) The Variations relates to re-performance of any of the Station Development Work because of Developer's failure to follow the Specifications.

23.7.2 It is clarified that except as otherwise specifically set out under the Agreement, no alteration in the Consideration or any adjustment to the Project Schedule shall be undertaken.

23.7.3 It is agreed that the Mandatory Project shall be subject to further detailing by the Parties from time to time and that such detailing shall not be considered as a change in Work. In addition, a request by Authority that Developer perform any works, services or provide any equipment and materials not specifically included within the Specifications, shall not be considered a Variation, if it is reasonable to infer that such works, services or supply of the equipment and materials were intended to be within the Mandatory Project or are necessary to make the Mandatory Project operable and capable of performing as specified in the Specifications and as per the Agreement.

23.8 Changes in Law

23.8.1 Notwithstanding anything to the contrary contained in the Agreement, the Developer agrees and acknowledges that the Developer shall not be entitled to any relief, including any alternation or adjustment to the Project Schedule and/or the Consideration, in respect of any Change in Law.

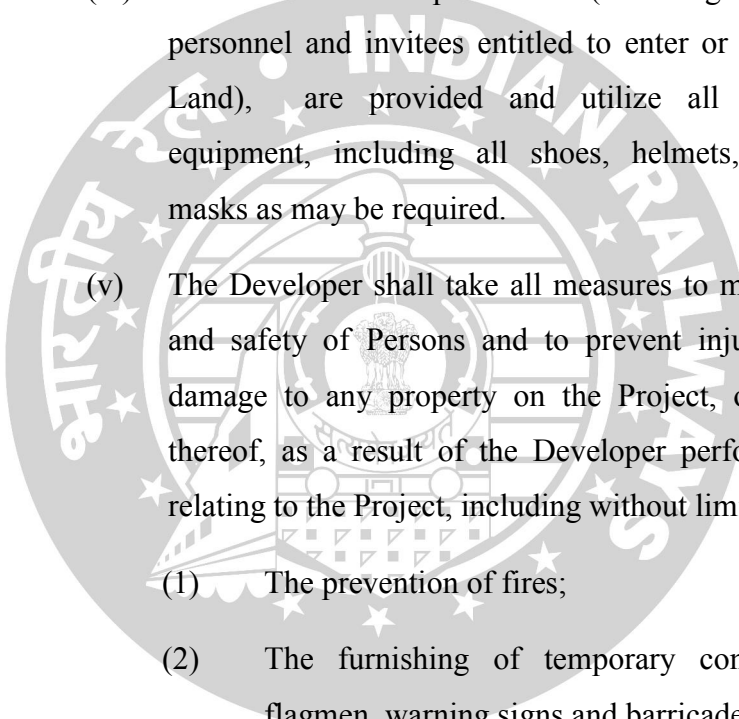
ARTICLE 24: SAFETY & QUALITY ASSURANCE

24.1 Safety Requirements

24.1.1 The Developer shall comply with the provisions of the Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Project, all invitees on Project Land, and all operations personnel, maintenance personnel, users and third parties. In particular, the Developer shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Railway Station, and shall comply with the safety requirements set forth in of **Schedule 24** (*Project Work, Safety and Access Requirements*) (the “**Safety Requirements**”).

24.1.2 Without prejudice to the generality of the foregoing,

- (a) The Developer shall follow and implement quality management system as per IS/ISO 9001:2008 and in accordance with the requirements of **Schedule 27** (*Quality Assurance*).
- (b) Without prejudice to the other terms of the Agreement, the Developer shall execute the work as per the safety, health and environment specifications set forth in the Safety Requirements and other Specifications, and shall be fully responsible for ensuring safe working conditions and for the safety of all Persons or invitees entitled to enter or be on the Project Land, and all users. In particular, the Developer shall
 - (i) Ensure that construction tools, construction equipment, temporary facilities, plant, machinery and equipment, and other items used in performance of the works for the Project, whether purchased, rented or otherwise provided by contractor or its Subcontractors, are in a safe condition and are capable of performing their intended functions;

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- (ii) Not cause, permit or tolerate a hazardous, unsafe, unhealthy or environmentally unsound condition or activity in performing the works in relation to the Project;
 - (iii) Provide any temporary works (including roadways, footways, guards, barricades and fences) which may be necessary, because of the execution of the works for the Project, for the use and protection of the public and owners and occupiers of adjacent land, and display all necessary safety posters and instructions regarding safety.
 - (iv) Ensure that its personnel (including Sub-Contractors' personnel and invitees entitled to enter or be on the Project Land), are provided and utilize all necessary safety equipment, including all shoes, helmets, gloves, jackets, masks as may be required.
 - (v) The Developer shall take all measures to maintain the health and safety of Persons and to prevent injury to persons or damage to any property on the Project, or in the vicinity thereof, as a result of the Developer performing the works relating to the Project, including without limitation:
 - (1) The prevention of fires;
 - (2) The furnishing of temporary construction fences, flagmen, warning signs and barricades;
 - (3) The elimination of excess dust or smoke emission;
 - (4) The protection of overhead utility lines, underground pipes, conduits or cables; and
 - (5) The protection of the existing facilities, completed works or facilities or work in progress by Developer or others.
 - (vi) The Developer shall be solely responsible and liable to take all precautions required to protect the workers, passengers and

public in respect of works executed by the Developer near the railway track, OHE etc.

- (c) The Developer shall arrange timely calibration of all his measuring and testing equipment at his own cost from reputed laboratory and supply of calibration certificates to the PMC.
- (d) The Developer shall provide work instructions/ check lists for proper execution of work. The Developer shall also maintain all relevant records and documents properly and the same shall be made available to Authority and PMC as required.

24.2 Safety Consultant

24.2.1 Appointment of Safety Consultant:

- (a) Authority shall be entitled to appoint an experienced and qualified firm or organization (the “**Safety Consultant**”) or depute its representative(s) for carrying out safety audit of the Project (including specifically Mandatory Project) in accordance with the Safety Requirements, and identify all other actions necessary for securing compliance with the Safety Requirements.
- (b) The manner of appointment, the terms of reference, and the facilities to be provided to the Safety Consultant as set forth in Part B of **Schedule 14** (*Consultants’ Functions*), in accordance with the terms of Article 28 hereof.

24.2.2 The Developer shall be required to undertake all steps and undertake all necessary actions as may be directed by the Safety Consultant or Authority to ensure safety of the Project, all invitees on Project Land, all operations personnel, maintenance personnel, passengers, and all operators, users and third parties. In the event of the failure of the Developer to undertake the same, or otherwise provide the necessary safeguards reasonably required for the protection of Persons or property contemplated in the Agreement (including this Article 24), Authority shall be entitled to undertake the same at the risk and cost of the Developer.

24.3 Expenditure on Safety Requirements

24.3.1 All costs and expenses arising out of or relating to Safety Requirements (or otherwise -any safety and quality assurance requirements set forth under the Agreement or any Applicable Law) shall be borne by the Developer, and Authority shall not have any liability in this regard.



ARTICLE 25: MAINTENANCE OF THE MANDATORY PROJECT

25.1 Station Facility Management

25.1.1 Simultaneously with the execution of the Agreement, the Developer shall enter into a Station Facility Management Agreement, in the form annexed hereto as **Schedule 21** (*Station Facility Management Agreement*), for the purposes of undertaking the maintenance of the passenger, operational and other areas forming a part of the Station Development Project (“**Station Facility Management**”), in the manner set forth in the Station Facility Management Agreement.

25.1.2 Such Station Facility Management shall:

- (a) cover the entire scope of maintenance and allied services in respect of the Station Development Project, as set out in the Station Facility Management Agreement, which may include without limitation, repairs to floors, architectural facades, finishing to walls and columns, public/official conveniences (toilets), drinking water facilities, signage, roads and pavements in passenger circulating area; maintenance of cleanliness, health and hygiene; maintenance of electrical installations for lighting, ventilation and air-conditioning; maintenance of sewerage and storm water system; energy cost in lighting, ventilation etc.
- (b) be for an initial term equivalent to the Maintenance Period for the Station Development Project.
- (c) require that the Developer performs the works and services under the Station Facility Management in compliance with the provisions of the Station Facility Management Agreement (the “SLA–Station Development Project”). In the event of the failure of the Developer to duly perform the said works and services in accordance with the SLA–Station Development Project, the Developer shall be liable to pay liquidated damages, as specified under the Station Facility Management Agreement.

- (d) require that the Developer shall take best efforts, and Authority shall render reasonable assistance, to transfer/novate the Existing Contracts and agreements between Authority and any third party (except for Legacy Matters to the extent crystalized prior to the Appointed Date), as relatable to the Station (as set forth under **Schedule 15** (*Existing Contracts*)) in favour of the Developer. Such novation would release Authority of all liabilities and obligations under such Existing Contracts or agreements (except for Legacy Matters to the extent crystalized prior to the Appointed Date). The Developer shall execute necessary documentation for the aforesaid novation. It is clarified that the novation of 70% of the Existing Contracts (by value as of the date of novation of the last such Existing Contracts taken into account for such computation) shall be deemed to fulfill this obligation of the Authority.
- (e) require that the Developer shall, from the Appointed date, honour all Existing Contracts and agreements between Authority and any third party as relatable to the Station (as set forth under **Schedule 15** (*Existing Contracts*)), as if Developer was an original party to such contracts and agreements instead of Authority and towards this end shall perform all responsibilities, liabilities and obligations of Authority at Developer's risk and cost (including payment/receipts obligations to/from counter parties). The Developer undertakes that any Existing Contract / third party contract that cannot be specifically novated in favour of the Developer, for any reason whatsoever, shall also be performed by the Developer (at its own risk and cost) for and on behalf of Authority.
- (f) provide that the Developer shall indemnify and keep indemnified the Indemnified Parties against any Liabilities and/or costs arising under the Existing Contracts / third party agreements. Any benefits arising from such contracts shall also vest with Developer.

- (g) provide that the Developer shall be entitled to receive all payments due to Authority under the Existing Contracts as set forth under **Schedule 15** (*Existing Contracts*), pursuant to the novation thereof in favour of Developer/Station Facility Manager in accordance with the Station Facility Management Agreement. However, the Developer shall not have a right to terminate these Existing Contracts, except according to their terms.
- (h) require that the Developer shall publish and implement a charter articulating the rights and expectations of users of the Station Development Project (the “**User Charter**”) substantially in the form specified in **Schedule 31** (*User Charter*). The Developer shall at all times be accountable and liable to such users in accordance with the provisions of the User Charter and Applicable Laws.
- (i) require that the Developer shall, within 6 (six) months from the date of issue of the Completion Clearance for the Station Development Project, achieve and thereafter maintain throughout the term of the Station Facility Management Agreement an ISO 9001:2008 certification or a substitute thereof for all the facilities at the Station Development Project, and shall provide a certified copy thereof to Authority forthwith.
- (j) require that the Developer shall provide a monthly report setting out the extent of its compliance with the SLA–Station Development Project, and the rectificatory action undertaken by the Developer in this regard.
- (k) Entitle the Developer to undertake Sub-Licenses in respect of the areas identified under the Station Facility Management Agreement, in the nature of the permissible Sub-Licenses as set out in **Schedule 34** (*Permissible Licenses in Station Area*), and appropriate the revenues

thereof in accordance with the Station Facility Management Agreement.

25.1.3 The Developer agrees and acknowledges that notwithstanding anything contained herein or in the Station Facility Management Agreement, the Developer shall have no right to act as the Station Facility Manager (or otherwise appropriate any proceeds available to the Station Facility Manager), in respect of the Station Facility Management, for any period beyond the Maintenance Period.

25.1.4 Further, the Developer also agrees and acknowledges that Authority (and/ or its nominees) shall, upon the expiry and/ or termination of the Station Facility Management Agreement (as executed with the Developer in respect of the Maintenance Period, as per Article 25.1.1 above), have the right to appoint any third party as the Station Facility Manager, and the Developer shall not have any right or entitlement to be re-appointed as such Station Facility Manager.

25.2 Maintenance of the Redevelopment Project

25.2.1 The Developer shall at all times during the Maintenance Period for the Redevelopment Project, commencing from the issuance of the Completion Certificate in respect of the Redevelopment Project, or any other earlier date subsequent to the completion of such Redevelopment Project that may be fixed by the Nodal Officer (with the concurrence of Authority), be responsible for and effectively maintain and uphold in good substantial, sound and perfect condition all and every part of the Redevelopment Project.

25.2.2 The Developer, on or prior to the fifth day of each month of the Maintenance Period, shall in respect of the immediately preceding month, provide to the PMC a report setting out the extent of its compliance with the requirements of the Agreement, and the rectificatory action undertaken by the Developer in this regard.

25.2.3 The Developer, shall for the duration of the Maintenance Period, make good from time to time and at all times as often as the PMC shall require, any damage or defect that may during the above period arise in or be discovered or be in any way connected with the Redevelopment Project and the Developer shall be liable for and shall pay and make good to Authority or other persons legally entitled thereto whenever required by the PMC so to do, all losses, damages, costs and expenses they or any of them may incur or be put

or be liable to by reasons or in consequence of the operations of the Developer or of his failure in any respect.

25.2.4 It is clarified that the Maintenance Period for the Redevelopment Project, shall commence from the date specified under Article 25.2.1 above, notwithstanding that the Defects Liability Period for the Redevelopment Project may be concurrently applicable.

25.2.5 **Approval of Redevelopment Project only by maintenance certificate:** No certificate other than maintenance certificate referred to in Article 25.2.6 shall be deemed to constitute approval of Redevelopment Project or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Agreement or any part thereof nor shall any other certificate conclude or prejudice any of the powers of the Nodal Officer or Authority.

25.2.6 **Redevelopment Project Maintenance Certificate:** The Redevelopment Project shall not be considered as completed until a 'maintenance certificate' shall have been signed by the PMC (subject to the concurrence of the Nodal Officer and Authority) stating that such works have been completed and the obligations of the Developer for the Defects Liability Period have been discharged to his satisfaction. The 'maintenance certificate' shall be given by the PMC upon the expiration of the Defects Liability Period for the Redevelopment Project or to the satisfaction of the PMC and full effect shall be given to this Sub-Article notwithstanding taking possession of or using the works or any part thereof by the Railway.

25.2.7 **Unfulfilled Obligations:-**Notwithstanding the issue of the maintenance certificate under Article 25.2.6, the Developer shall remain liable for the fulfillment of any obligation prior to the issue of the said maintenance certificate which remains unperformed at the time such certificate is issued and for the purposes of determining the nature and extent of any such obligations the relevant provision herein shall be deemed to remain in force.

ARTICLE 26: MAINTENANCE OF THE COMMERCIAL DEVELOPMENT PROJECT

26.1 Maintenance of the Commercial Development Project

26.1.1 The Developer shall be responsible for safety, soundness and durability of the Commercial Development Assets constructed upon the Site and shall ensure that the Assets comply with the specifications and standards as per Good Industry Practice (for the Design Life and for further complying the requirements as set out herein). The Developer shall operate and maintain the Commercial Development Assets and Project Utilities at all times during the Lease Tenure as per the Good Industry Practices, and as per the requirements set forth hereunder (including the Schedules) so that they perform satisfactorily at all times and meet all the serviceability requirements during the Design Life.

26.1.2 The Developer shall for the duration of the Commercial Development Project be liable for any latent or visible defect and deficiency in Commercial Development Assets (defect due to Drawings, design or construction, workmanship or any other reason) which could not be ordinarily detected. The Developer shall carry out necessary corrective and preventive measures so that the defects and deficiencies are rectified and Commercial Development Assets are restored to a sound condition.

26.2 Maintenance and Replacement Plan

26.2.1 Before the start of Commercial Operation of the Commercial Development Project, the Developer shall prepare a Maintenance and Replacement Plan, for the approval of the Nodal Officer (which approval shall be granted with the concurrence of Authority), for the maintenance and replacement of the Commercial Development Assets and the Commercial Development Project Utilities, subject however to the Commercial Development Plan ensuring that the maintenance is carried out in compliance with the **Schedule 6** (*Maintenance Requirements for Commercial Development Project*), the Specifications and Applicable Laws.

26.2.2 The Developer shall be required to undertake the maintenance of the Commercial Development Project strictly in accordance with the approved Maintenance and Replacement Plan (subject to such modifications and amendments as may be specified and/ or approved by the Nodal Officer).

26.2.3 The Developer shall, at reasonable intervals in the Project, and at least once each financial year, provide a report to Authority demonstrating the extent of its compliance with the Maintenance and Replacement Plan. Authority shall also be entitled, with reasonable notice, to inspect the works relating to the Commercial Development Project, to examine the compliance with the Maintenance and Replacement Plan. Pursuant to such report of the Developer and/ or inspection of Commercial Development Project, Authority shall be entitled to direct the Developer to undertake such works as may be necessary to ensure compliance with the Maintenance and Replacement Plan, and the Developer shall forthwith undertake such works. Where the Developer fails to undertake the necessary rectification works required by Authority, the Authority shall be entitled to undertake the same at the risk and expense of the Developer.

26.3 Asset and Project Utility Register

26.3.1 The Developer shall prepare and maintain a register (the (“**Asset and Project Utility Register**”)) of all the Commercial Development Assets and Project Utilities constructed by it. The Asset and Project Utility Register shall be prepared as soon as each of the Assets and Project Utilities provided for in the Commercial Development Plan are completed. The Developer shall update the Asset and Project Utility Register as and when any additional Asset or Project Utility is added at the Site or any one of them is replaced by the Developer as part of the Maintenance and Replacement Plan. The Developer shall provide two copies of the Asset and Project Utility Register to Authority and Railways within 30 (thirty) days of preparing or updating the same.

26.4 Interfacing Structures and Areas

26.4.1 Simultaneously with, and as a part of the approval of the Maintenance and Replacement Plan, the Developer shall submit for the approval of the PMC

(which approval shall be granted with the concurrence of the Nodal Officer and the Railways), an Interfacing Structures and Areas Maintenance Plan, for the maintenance of the Interfacing Structures and Areas.

26.4.2 All Interfacing Structures and Areas, the same shall be maintained in accordance with the approved Interfacing Structures and Areas Maintenance Plan.

26.4.3 The Developer shall, at reasonable intervals in the Project, and atleast once each financial year, provide a report to Authority demonstrating the extent of its compliance with the Interfacing Structures and Areas Maintenance Plan. Authority shall also be entitled, with reasonable notice, to inspect the works relating to the Commercial Development Project and the Interfacing Structures and Areas to examine the compliance with the Interfacing Structures and Areas Maintenance Plan.

26.4.4 Pursuant to such report of the Developer and/ or inspection of Commercial Development Project and the Interfacing Structures and Areas, Authority shall be entitled to direct the Developer to undertake such works as may be necessary to ensure compliance with the Interfacing Structures and Areas Maintenance Plan, and the Developer shall forthwith undertake such works. Where the Developer fails to undertake the necessary rectification works required by Authority, the Authority shall be entitled to undertake the same at the risk and expense of the Developer.

ARTICLE 27: MARKETING & SUB-LEASING

27.1 Marketing prior to Completion

27.1.1 After approval of the Detailed Design & Drawings and Commercial Development Plan from the PMC and obtaining of the approvals in respect thereof from the concerned Government Authority under Applicable Laws, the Developer shall be entitled to market Built Up Area in the Commercial Development Assets through a provisional letter of allotment in compliance with the requirements set forth in Article 27.2.

27.1.2 Provided that the Developer shall only market the Built Up Area under-construction under provisional letter of allotment instrument till the time a formal Sub-Lease Deed is executed between the Developer and End-User as specified in Article 27.2 below. The Developer may also undertake the marketing directly through execution of Sub-Lease Deed (in accordance with Article 27.3 below), provided any such marketing shall also be subject to the requirements of Article 27.2.

27.2 Pre-requisites to Marketing

27.2.1 The Developer agrees and acknowledges that any marketing (including any Sub-Lease of the Built Up Area in the Commercial Development Assets), shall be subject to the following:

- (a) All amounts due and payable by third parties pursuant to marketing by the Developer, shall be paid through account payee cheques and be deposited in either the Escrow Account (if applicable) or designated bank account of the Developer. The Developer shall furnish the details of the designated bank account to Authority prior to undertaking any marketing in respect of the Project.
- (b) The Developer shall not utilize the receipts from the marketing/Sub-leasing except towards meeting with the expenses in executing the Project and making payments of Consideration to Authority, till such time as the entire Project is completed and Completion Clearance is issued by the Nodal Officer, in respect of the entire Project.
- (c) The consideration for any Sub-Lease shall be structured by the Developer complying with the following conditions:
 - i. There shall be a provision of interest-free and refundable security deposit to be paid by the End User prior to execution

of the sub-lease deed. This security deposit shall be returned to the End User on expiry of the sub-lease period or on termination of the sub- lease prior to the expiry after delivery of vacant physical possession by the End User and after making adjustments of all outstanding payments.

- ii. The sub-lease rent shall be structured to have a monthly/quarterly/annually rent to be paid by the End User in advance in the first week of every such period. The rent shall increase by a minimum of 15% (fifteen percent) every three years.
- iii. The rent must be the cumulative sum of two components, (1) the first towards payment of the proportionate part of the Consideration, and the (2) second towards payment to the Developer.
- iv. The first component of the rent shall be computed in such manner that the total of this component of the rent (computed annually) for the entire Commercial Development Project is at least 25% (twenty five percent) higher than the Consideration payable by the Developer to Authority in such year.
- v. Subject to completion of the Mandatory Project, the Developer may, however, at his discretion, collect the second component of the rental of an area as one-time payment by discounting the specified monthly rental by 12% (twelve percent). In the event the Developer opts to collect the second component it shall collect the entire first component of rent in respect of such area and pay the same to the Authority.
- vi. There shall be provision for separate monthly operation and maintenance charges to be paid in advance in the first week of the month towards operation & maintenance of Commercial Development Assets and Project Utilities. The operation and maintenance charges for each Sub-Leased space shall be fixed in advance by the Developer based on the assessment of the operation and maintenance expenses.

- (d) A provisional letter of allotment from the Developer shall not bestow any right on the third party for usage of space in the Project till such time as the Sub-Lease Deed has been executed. Every provisional letter of allotment shall include the status of payments made to Authority and shall be accompanied by a draft of the Sub-Lease Deed, which shall include terms and conditions, restrictions and limitations contained in the Agreement and shall mention that lease rights would flow to the third party only on payment of full Lease Premium and other dues to Authority by the Developer and receipt of Completion Clearance from the Authority for the Project and there should be no continuing Event of Default on part of Developer.
- (e) In case of termination of the Agreement or substitution of the Developer during the Construction Period, all the letter of allotments issued by the Developer shall be liable to be terminated at the discretion of either the Nominated Company or Authority as the case may be. However, in such an event, the third party shall be entitled for refund of the amount (without any interest) already paid to the Developer as mentioned under Article 27.2.1 (a) above from the Nominated Company or Authority, as the case may be. In the event, the refund is to be done by Authority, the total amount of such refunds for all the provisional allottees shall not exceed the maximum amount of Termination Payment permissible under the Agreement to the Developer.
- (f) Any marketing or booking done or provisional letter of allotment issued not complying with requirements set forth in the Agreement shall not be valid and the Developer shall indemnify and keep and hold harmless the Indemnified Parties in case of any default in complying with the conditions herein.
- (g) Upon receipt of a notice of Financial Default under the Financing Agreements or Notice of Intention to Terminate, the Developer shall immediately stop any further marketing, and shall not issue any

further provisional letter of allotment or execute any further Sub-Leases.

- (h) Marketing of any open area/space on the Site can be done for only short duration (less than a year) through sub-licensing for temporary usage without construction of any permanent structure, and shall be subject to the prior consent of Authority.
- (i) Until the Developer has obtained the Completion Clearance from the Nodal Officer and Completion Certificate in respect of the entire Project or a phase of the Project, as the case may be, the Developer cannot enter into a Sub-Lease Deed with any third party.

27.3 Marketing Process & Sub-Lease

27.3.1 Upon issuance of the Completion Clearance for the Commercial Development, the Developer shall have the right to grant Sub-Lease of spaces within the Commercial Development Assets to End User(s) to the extent that the percentage of the cumulative Built Up Area of all the Sub-Lease Deeds to the total permissible Built Up Area does not exceed the percentage amount of Lease Premium already paid by the Developer to Authority and subject to the following conditions: set forth hereinafter. For avoidance of doubt, it is clarified that the Completion Clearance in respect of the Commercial Development Project shall not be issued until the receipt of the Completion Clearance in respect of the Station Development Project and the Redevelopment Project.

27.3.2 Any Sub-Lease executed in respect of the Built Up Area in the Commercial Development Assets shall be subject to the following terms:

- (a) The sub-lease granted to such End User shall be for a maximum period not exceeding the remainder of Lease Period and notwithstanding anything terminate automatically on the Expiry Date;
- (b) Such End User shall not be entitled to further sub-lease or sub-license (or otherwise transfer its interest in) the Sub-Leased Built Up Area,;
- (c) The draft of the Sub-Lease Deed shall be prepared by the Developer complying with the requirements under the Agreements, which shall

include the reference terms of sub-lease set out in **Schedule 41** (*Indicative Terms of Sub-Lease Deed to be executed with End User*). Further, the draft of the Sub-Lease Deed shall have to be pre-approved by the Nodal Officer (which approval shall be granted with the concurrence of Authority);

- (d) Each time the Developer enters into a Sub-Lease Deed with a End User, the Developer shall collect a one-time payment of ` 100 (Rupees one hundred) per Sq. M. of the Sub-Leased area from End User through A/c Payee Cheque on behalf of Authority and deposit the same with Authority along with a copy of such Sub-Lease Deed within 30 (thirty) days of entering into such Sub-Lease;
- (e) The term of Sub-Lease Deed shall not extend beyond the Lease Period and notwithstanding anything terminate automatically on the Expiry Date;
- (f) The right of Sub-Leasing of the Commercial Development Assets shall be solely vested in the Developer and shall not be transferable in any form except to its successors and permitted assigns. Further, with prior approval of the Developer and subject to a one-time payment of ` 100/- (Rupees one hundred) per Sq. M. of the area from such new party through an account payee cheque to Authority as transfer charge, in the manner set out in Article 27.3.2.(c) above, the Sub-Lease of the End User can be transferred to another party;
- (g) The Developer shall maintain a Sub-Lease register, in such format as may be acceptable to Authority. Details of all the Sub-Lease Deeds shall be entered into the Sub-Lease register within 30 (thirty) days of entering into the Sub-Lease Deed and a copy of such a Sub-Lease Deed shall be supplied to Authority. The Developer shall maintain the log of the cumulative Built Up Area (including percentage of the total permissible Built Up Area) Sub-Leased and the cumulative percentage of payment made to Authority towards Lease Premium in a Sub-Lease register (the “**Sub-Lease Register**”). The Developer shall provide a copy of the Sub-Lease Register to Authority every

year before the 15th of April. Further, upon the receipt of a written request from Authority, the Developer shall allow the representatives of Authority to conduct a due diligence of all the Sub-Lease Deeds entered into by the Developer with respect to the Project and shall, upon demand, supply the relevant extracts of the Sub-Lease Register to the representatives of Authority.

- (h) All the receipts/revenue to the Developer from Lease/Sub-Lease of the Commercial Development Assets be collected and deposited by the Developer in the designated Escrow Account only.

27.4 **Information Management System**

27.4.1 The Developer shall maintain an information management system for all bookings done, payments received, future cash flows from such bookings etc, in respect of any Sub-Lease or proposed Sub-Lease of the Built Up Area in the Commercial Development Assets. A copy of such report shall be submitted by the Developer to Authority every three months during Construction Period and thereafter every six months.

27.5 Notwithstanding anything contained in this Agreement, under no circumstances shall the Developer sub-contract the overall operation and management of the Commercial Development Project, and the Developer shall at all times exercise and be responsible for overall management control, operation and supervision of the Commercial Development Project through its senior management staff, irrespective of any sub-contracting of activities and/or services.

27.6 Any violation of these conditions (under this Article) shall constitute a Developer's Event of Default.

ARTICLE 28: APPOINTMENT OF THE PMC & OTHER CONSULTANTS

28.1 Appointment of the Project Management Consultant

28.1.1 Authority shall notify the Developer in writing of the appointment and identity of the Project Management Consultant or PMC and of any replacement thereof from time to time.

28.1.2 The PMC shall be a designated railway officer / supervisor or suitably qualified engineer, firm of engineers or other appropriately qualified professional(s), having expertise and experience necessary to discharge its functions as contemplated under the Agreement. Where necessary, the PMC may in turn appoint suitably qualified sub-consultants or sub-contractors to undertake and perform any of the PMC's functions as contemplated under the Agreement.

28.1.3 Authority shall have power to replace any PMC at any time. The Developer shall have no right to challenge it nor any claim whatsoever with respect to such replacement of PMC.

28.2 Role & Functions of the Project Management Consultant

28.2.1 Notwithstanding anything to the contrary, specified in the Agreement, the role and functions of the PMC, shall be limited to the following:

- (a) All aspects of the Mandatory Project and the Interfacing Structures and Areas;
- (b) Clearance of Site, health, safety, quality assurance environment, and other aspects of the Commercial Development Project, as specifically identified hereunder;
- (c) Approval of the Number and location of sheds, store-houses and yards of the Developer as necessary for the execution of the Project;
- (d) Grant of extension of time for construction and/ or payment, if any, to the Developer as contemplated under the Agreement;
- (e) Any other item in respect of which the PMC is specifically entitled to

and/ or is required to provide any approval, NOC, or issue any directions/ instructions, as identified hereunder.

Provided that Authority may, at its discretion, perform any of the functions and exercise any powers of the PMC either directly or through any of its nominees.

28.2.2 The PMC shall have the powers and duties specified in the Agreement including without limitation, the following:

- (a) Power to issue approvals and NOC, in respect of matters specifically identified under the Agreement;
- (b) Examining and inspecting the compliance of the works and services undertaken by the Developer, with the requirements of the Agreement and the Specifications;
- (c) Providing such reports to Authority in respect of the execution of the Project, and the status of compliance and/ or non-compliance by the Developer; and
- (d) Power to issue to the Developer all necessary directions, instructions in respect of any of the matters identified under Article 28.2.1, and Article 28.2.2 (a), (b) and (c) above;

28.2.3 Notwithstanding anything contained in the Agreement, the PMC shall not have the authority in respect of the following subjects, unless expressly authorised by Authority by way of a notice to the Developer:

- (a) Undertaking or approving any amendment, modification or variation of the Agreement, or any Variation or to otherwise relieve either Party of any of its duties, obligations or responsibilities under the Agreement;
- (b) Approving/ granting any claims of the Developer;
- (c) Waiving off any penalty, any liquidated damages, and/ or any other payments to be made by the Developer hereunder; and

(c) Ordering any works, services or tests beyond the scope of works of the Developer hereunder (or identified hereunder).

28.2.4 In the event that the PMC is required to obtain the specific approval, and/or concurrence of Authority before exercising any authority under the Agreement, the same shall be subject to the written consent/ concurrence of Authority, unless expressly otherwise authorised by Authority, and notified to the Developer.

28.2.5 Any proposal, inspection, examination, testing, consent, approval, failure to disapprove or other similar act by the PMC shall not relieve the Developer from any responsibility for any act, omission or discrepancies in the compliance with the terms of the Agreement.

28.2.6 Where the PMC is required to determine any value, cost, or extension time, he shall consult with the Developer and Authority in an endeavour to reach an agreement. If an agreement is not achieved the PMC shall determine the matter fairly, reasonably and in accordance with the Agreement, and with the approval of Authority.

28.2.7 All communications made by or to the PMC shall be made with a copy in writing to Authority.

28.3 Facilities for the PMC & the Nodal Officer

28.3.1 The Developer shall provide, at the Project Land and/or such other location as may be approved by Authority, such facilities to the PMC as would be reasonably required by the PMC to perform and discharge its functions hereunder;

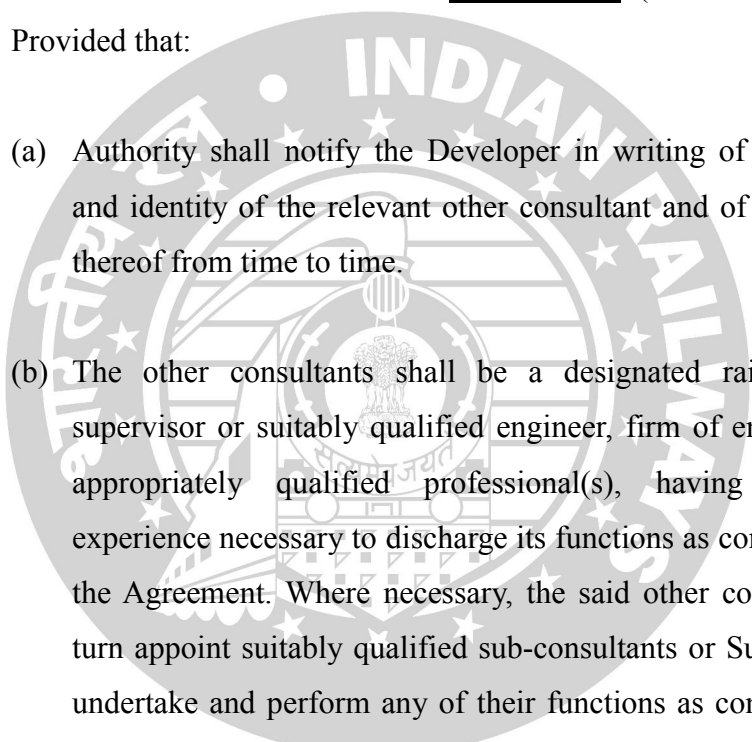
28.3.2 Without prejudice to the generality of the foregoing, the Developer shall provide to the PMC the facilities, as set forth in **Schedule 14** (*Consultants' Functions*);

28.3.3 The Developer shall keep one copy of Detailed Design & Drawings, Drawings and Specifications and such other documents as may be required by the PMC, in hard as well as soft copies, at the relevant site of the Project Land, in good order for the PMC, the Nodal Officer or its

representatives.

28.4 Other Consultants

28.4.1 Without prejudice to the generality of the foregoing, Authority shall be entitled to appoint such other consultants (including the Safety Consultant appointed in accordance with Article 24 hereof), as maybe specified in **Schedule 14** (*Consultants' Functions*). The nature, number, qualifications, role & functions, of such other consultants shall be set out in **Schedule 14** (*Consultants' Functions*), and the facilities to be provided to such other consultants shall be set out in **Schedule 14** (*Consultants' Functions*). Provided that:

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- (a) Authority shall notify the Developer in writing of the appointment and identity of the relevant other consultant and of any replacement thereof from time to time.
 - (b) The other consultants shall be a designated railway officer or supervisor or suitably qualified engineer, firm of engineers or other appropriately qualified professional(s), having expertise and experience necessary to discharge its functions as contemplated under the Agreement. Where necessary, the said other consultants may in turn appoint suitably qualified sub-consultants or Sub-Contractors to undertake and perform any of their functions as contemplated under the Agreement.
 - (c) Authority shall have power to replace any consultant at any time. The Developer shall have not have right to challenge or any claim whatsoever in respect of such replacement of consultant.

CHAPTER IV: FINANCIAL OBLIGATIONS OF PARTIES



ARTICLE 29: FINANCING PLAN & FINANCIAL CLOSE

29.1 Financing of the Project

29.1.1 The Developer expressly agrees and undertakes that the Developer shall himself be responsible to arrange for financing and/or meeting all financing requirements for the Project at its own risk and costs and shall enter into Financing Agreements with the Lenders for the same. As and when such Financing Agreements are approved by the Lenders, with or without modifications, a copy of the same shall be furnished by the Developer to Authority.

29.2 Substitution Agreement

29.2.1 The Agreement shall not be assigned by the Developer. Provided however, subject to the provisions of the Agreement, Lenders may be given a right of substitution by execution of the Substitution Agreement in the form annexed hereto, as **Schedule 20** (*Substitution Agreement*). Provided further that at any given time, Authority shall enter into only 1 (one) Substitution Agreement with 1 (one) Lenders' Representative (as defined in the Substitution Agreement); such Lenders' Representative being an agent for one consortium of Lenders.

29.2.2 The Lenders may exercise the rights of step in or substitution as provided in the Substitution Agreement provided that the Nominated Company substituting the Developer shall enjoy all rights and be responsible for performing/ fulfilling all obligations of the Developer under the Agreement. Provided that in the event the Lenders are unable to substitute the Developer by a Nominated Company as per provisions of the Substitution Agreement, Authority shall have the right to substitute the Developer by such a Nominated Company as may be selected through a process of competitive bidding.

29.2.3 The Nominated Company substituting the Developer shall enjoy all rights and be responsible for all obligations of the Developer under the Agreement, however in this event the Lenders will be required to restructure the debt obligations in accordance with the provisions of the Financing Agreements, and the Nominated Company shall not be liable for an amount exceeding 85% (eighty five percent) of the Debt Due.

29.3 Creation of Encumbrance

29.3.1 The Developer, after payment of all the payments regarding Lease Premium due (or otherwise payable) to Authority under the Agreement, shall have the right to create

Encumbrance over its Lease Rights of the Commercial Development Assets and over any of the receivables due to it from the Project Revenues (after making allowance towards all future payments to Authority and maintenance of Station Development Project) in favour of the Lenders for the purposes of financing the Project and in each case with prior written permission of the Authority, which shall not be unreasonably withheld.

29.4 Financial Model for the Project

- 29.4.1 The financing arrangements of the Developer in relation to the Project shall be based on the Financial Model for the Project prepared by the Developer and approved by the Lenders prior to entering into the Financing Agreements.
- 29.4.2 The Financial Model shall set forth all capital costs, sources of financing such capital costs and construction cost for the entire Project, O&M Expenses, Project Revenues, midlife replacements, replacement costs, reserves for emergencies, servicing of various debts, Distributions to the shareholders of the Developer and the projected Equity IRR.
- 29.4.3 The Financial Model shall be the basis on which the Developer shall prepare the details of amounts to be withdrawn from the Escrow Account if applicable. The Financial Model shall suitably incorporate any costs in relation the Station Development Project, the Redevelopment Project and, where contemplated under the SCDA, the Station Facility Management.
- 29.4.4 The Developer shall update the Financial Model after the Completion Clearance has been issued for the entire Project, so as to reflect the actual Project Cost incurred on the Project. Thereafter the Financial Model shall be updated by the Developer every five years till expiry of the Term to reflect the actual O&M Expenses, replacement costs, major repairs, realization from Project Revenues.
- 29.4.5 The Developer shall provide to Authority, a copy of the initial Financial Model and each time the same is revised/amended and duly approved by the Lenders and in case there is no Lender at any point of time, the same shall be duly certified by the Statutory Auditor of the Developer. In the event of failure of the Developer to revise/ amend the Financing Model, and provide a copy thereof to Authority, Authority shall be entitled suspend certain withdrawals from the Escrow Account, if existing, till the Developer remedies such failure.

ARTICLE 30: CONSIDERATION

30.1 Consideration for Redevelopment Project & Station Development Project

30.1.1 The Developer agrees that in addition to the Consideration payable by the Developer to Authority in respect of the Lease Rights for the Commercial Development Project, the Developer shall, in consideration for the right and entitlement to undertake the Commercial Development Project and the other rights granted to the Developer, under and in accordance with the Agreement, undertake and implement the Redevelopment Project and the Station Development Project in accordance with the scope set forth in Article 2, and **Schedule 2** (*Scope of Project*), and in compliance with the terms of the Agreement, including the Specifications set forth herein, and in accordance with the Project Schedule herein contemplated;

30.1.2 The Developer acknowledges that it shall not be entitled to receive any additional consideration in respect of the Redevelopment Project or the Station Development Project and further acknowledges that the consideration as set forth in Article 30.1.1 above constitutes good and adequate compensation and consideration for the same.

30.1.3 Notwithstanding anything contained in Articles 30.1.1 and 30.1.2 above, the Parties agree that the payment in respect of the Provisional Sum Items, shall, in the event of there being a variation from the amounts set forth in **Schedule 16** (*Provisional Sums*), be adjusted in accordance with the provisions of Article 31 hereof, in/ from the immediately succeeding tranche of the Consideration payable by the Developer to Authority.

30.2 Consideration in respect of the Project

30.2.1 In consideration of the grant of the Lease Rights for Commercial Development Assets and the right to undertake the Project, the Developer shall make payments to Authority in accordance with **Schedule 3** (*Schedule of Payments*).

30.2.2 The payments to be made by the Developer to Authority shall consist of one

or more of the Lease Premium, Annual Lease Rent and License Fee as described herein and subject to the provisions of **Schedule 3** (*Schedule of Payments*). All payments to be made by the Developer shall be exclusive of taxes (i.e. taxes additional).

30.2.3 The amount of consideration specified in **Schedule 3** (*Schedule of Payments*) is subject to the scope of the Project. In case the maximum scope of development is specified in terms of FAR/FSI, the extent of Built up Area that can be developed at the Site by the Developer shall be as per Applicable Laws. However, for the purpose of the Agreement, the permitted Built up Area at the Site shall be as measured from and recorded on the drawings so prepared by the Developer and approved by Nodal Officer.

30.2.4 Further, without prejudice to any other right or remedy available to either Authority or the Developer, the payment of Consideration by the Developer as specified in **Schedule 3** (*Schedule of Payments*) thereon shall be the essence of the Agreement and the Developer shall continue to make such payments to Authority pending any Dispute in respect of the Agreement.

30.2.5 The Authority may, for any reason but prior to providing the right of way to the Redevelopment Land and/or Station Development Land or later on, as the case may be, decide not to get full or part of Redevelopment Project and/or Station Development Project executed by the Developer and in such case the Developer shall pay to the Authority against the works decided not to be executed by the Authority, proportionate or full amount, as the case may be, calculated based on the Estimated Cost of Redevelopment Project and/or Estimated Cost of Station Development Project as specified in **Schedule 26** (*Estimated Project Cost*). The said amounts shall be payable in equal annual instalments and as per due dates to be determined by Authority, provided that the last instalment shall be paid not later than completion date of the Redevelopment Project and/or Station Development Project, as the case may be, stated in the Agreement. The interest on these instalments shall be paid as per rate of interest taken in **Schedule 3** (*Schedules of Payments*) from the date of such decision of Authority. If the Developer fails to make payments

of such instalment(s) within the respective due dates so determined by Authority it shall be construed as a Developer's Event of Default and shall be treated accordingly under the Agreement.

30.2.6 **Lease Premium** : Consideration in the form of Lease Premium shall be paid in accordance with the following requirements:

- (a) Amount of the Lease Premium shall be as specified in **Schedule 3** (*Schedule of Payments*).
- (b) The entire amount of the Lease Premium shall be paid to Authority by the Developer in one or more instalments in accordance with **Schedule 3** (*Schedule of Payments*).
- (c) The due date for payment of each instalment shall be as specified in **Schedule 3** (*Schedule of Payments*).
- (d) Interest shall be payable on the total outstanding amount of the Lease Premium at the rate of interest specified in **Schedule 3** (*Schedule of Payments*).
- (e) The Developer can pay an instalment of the Lease Premium even before the due date as specified in **Schedule 3** (*Schedule of Payments*), in which case the Developer has to pay interest only upto the actual date of payment.
- (f) The amount of Lease Premium specified in **Schedule 3** (*Schedule of Payments*) is for the area of Site specified in **Schedule 1C** (*Site Land*). If after the joint measurement of the area of the Site, the area of the Site (and/ or the permissible FSI/ FAR thereon) made available to the Developer is found to be at variance from that stated in **Schedule 1C** (*Site Land*), the Lease Premium shall increase or decrease as per Article 30.2.9 below. In case of increase in area (and/ or the permissible FSI/ FAR thereon), the additional Lease Premium over the accepted Lease Premium shall be paid by the Developer to Authority by dividing it in such number of instalments as are equal to the total number of the remaining instalments of the Lease Premium. The said amount shall be paid along-with such remaining instalments of the original Lease Premium. In case the actual area (and/ or the permissible FSI/ FAR thereon) of the Site is less than the area

stipulated in the Bid Documents, the extra payment made, if any, till then shall be adjusted against the Lease Premium due to Authority. However, if the Developer pays the entire Lease Premium upfront, the proportionate increase or decrease in Lease Premium depending upon increase or decrease in area of the Site (and/ or the permissible FSI/ FAR thereon) (against the area stipulated in **Schedule 1C** (*Site Land*)) would be payable/ receivable by the Developer to/ from Authority as the case may be. However, the interest on such increase in Lease Premium as per **Schedule 3** (*Schedule of Payments*), shall be payable from the date of approval of such change in Built up Area by the Authority.

30.2.7 **Annual Lease Rent:** Consideration in the form of the annual payments (i.e. lease rent) towards the grant of the Lease Rights (the “Annual Lease Rent”) shall be paid in accordance with the following requirements:

- (a) The Annual Lease Rent required to be paid to Authority by the Developer shall be as specified in **Schedule 3** (*Schedule of Payments*).
- (b) The amount of Annual Lease Rent shall be paid from the date specified in **Schedule 3** (*Schedule of Payments*).
- (c) The amount of Annual Lease Rent stated above shall automatically be revised as specified in **Schedule 3** (*Schedule of Payments*).
- (d) The Annual Lease Rent for a Financial Year shall be payable in advance on or before the 10th April of each Financial Year. However, the Annual Lease Rent of the first Financial Year shall be paid on the date from which the Annual Lease Rent becomes payable. Where payment is due in the middle of a Financial Year the relevant amount of Annual Lease Rent for the first and last Financial Year will be calculated on proportionate basis on the number of days for the respective Financial Year.
- (e) If after the joint measurement of the area of Site, the area is found to be at variance, the Annual Lease Rent shall be computed in terms of

Article 30.2.9 below.

30.2.8 **License Fee** : Consideration in the form of the License Fee towards the grant of rights under the Station Facility Management Agreement shall be paid by the Developer to the Authority in accordance with the terms of the Station Facility Management Agreement.

30.2.9 **Revision of Consideration - Additional Lease Premium and Revised Annual Lease Rent**

(a) In the event that the Developer proposes to build additional Built Up Area on the Site in terms of any revision of FAR/FSI by any Government Authority, the Developer shall be required to pay the revised consideration (additional Lease Premium and increased Annual Lease Rent) for the remaining period of the Lease Period.

(b) The revised consideration (additional Lease Premium and the Increased Annual Lease Rent) shall be computed as under:

$$\text{Additional Lease Premium} = \frac{\text{Additional Built Up Area}}{\text{Reference Built Up Area}} \times \frac{\text{New Circle Rate}}{\text{Reference Circle Rate}} \times \frac{\text{Remaining Term}}{\text{Term}}$$

{

$$\text{Revised Annual Lease Rent} = \left\{ \frac{\text{Additional Built Up Area}}{\text{Reference Built Up Area}} \times \frac{\text{New Circle Rate}}{\text{Reference Circle Rate}} + 1 \right\} \times \text{Prevailing Annual Lease Rent}$$

where,

Additional Built up Area = Additional Built up Area of Commercial Development Asset permitted or reduction in Built up Area permitted at Site

Reference Built Up Area = The Built Up Area of Commercial Development Asset permitted at the Site as per the FAR/FSI applicable on the date of submission of the Bid

Reference Circle Rate = As specified on the date of issue of LOA or as Specified in SCDA whichever is later

New Circle Rate = The prevailing circle rate on the date of

approval for change in Built up Area by the competent authority to approve the plans.

- (c) If the New Circle Rate is lower than the Reference Circle Rate, the Reference Circle Rate shall be considered in place of new Circle Rate for the purposes of above calculation. Further, if additional Built Up Area of Commercial Development Asset proposed on the Site has resulted from an additional FSI/FAR procured by the Developer on payment of full cost for the same to a Government Authority or a private party having such rights, not forming part of a general notification by a Government Authority for the area, no additional Lease Premium shall be payable by the Developer to Authority. However, additional Annual Lease Rent shall be payable by the Developer to Authority.
- (d) The amount of additional Lease Premium plus taxes, if any, shall be paid upfront in full or in instalments as approved by Authority, and in any event prior to the approval of the applicable Commercial Development Plan in respect of the additional Built Up Area. The rate of interest as applicable on the Lease Premium in terms of **Schedule 3** (*Schedule of Payments*) shall be applicable for the additional Lease Premium also. However, the interest shall be computed and payable from the date of approval of such change in Built up Area by the Authority.
- (e) Before beginning of construction of the additional Built Up Area on the Site, the Developer shall obtain approval of the Nodal Officer/Authority, in the same manner as specified under Article 19 for the initial Detailed Design & Drawings, and shall prepare and obtain approval of the Nodal Officer/Authority for a supplementary Commercial Development Plan or amendment to the Commercial Development Plan in respect of the additional Built Up Area on the Site. However before beginning of construction of the additional Built Up Area on the Site, the Developer shall have to pay either the full Lease Premium or the first instalment of additional Lease Premium

alongwith Security Deposit as decided by the Authority in case the same has been approved for payment in instalments.

- (f) If during the Construction Period, the Built Up Area on the Site gets reduced to less than the Reference Built up Area due to any order, notification, instruction, road widening, acquisition for public purpose etc. of concerned Government Authority and the benefit of compensatory FAR due to such loss of land is not passed on to the Developer, then, the Developer shall be entitled for pro-rata reduction in the Lease Premium and the Annual Lease Rent. However, in case additional FAR or transfer development right (the “**TDR**”) is offered by the concerned Government Authority as compensation toward the loss of land, the ownership of such FAR / FSI or TDR shall vest with Authority, and the Developer shall not have any right of usage except development at the Site.
- (g) Built Up Area on the Site constructed at the cost of additional FAR/FSI/TDR shall vest with the Authority at the end of the Lease Tenure without any cost payable by Authority.

ARTICLE 31: PROVISIONAL SUM FOR MANDATORY PROJECT

31.1 **Application & Adjustment of Provisional Sums:** The Parties agree that the Agreement has been entered into based on the understanding that the aggregate cost of all Provisional Sum Items comprised in the Mandatory Project shall not exceed the sums set forth in Schedule 16 (*Provisional Sums*), and that in the event that the actual cost of such Provisional Sum Items comprised in the Mandatory Project is at variance from the said sums set forth at Schedule 16 (*Provisional Sums*), then the adjustment mechanism in this Article 31.1 shall apply:

31.1.1 The Developer agrees that all expenditure towards the Provisional Sum Items comprised in the Mandatory Project, shall be undertaken with the approval of the PMC (which approval shall be granted with the concurrence of Authority).

31.1.2 In the event that:

- (a) the actual cost of the Provisional Sum Items comprised in the Mandatory Project is higher than the sums allocated for such diversion under Schedule 16 (*Provisional Sums*), the Developer shall be entitled to reduce, from the next tranche(s) of the Consideration payable by the Developer to Authority in terms of the Schedule 3 (*Schedule of Payments*), an amount equal to the amount by which the actual cost of Provisional Sum Items comprised in the Mandatory Project exceeds the sums allocated for such Provisional Sum Items;
- (b) the actual cost of the Provisional Sum Items comprised in the Mandatory Project is lower than the sums allocated for such diversion under Schedule 16 (*Provisional Sums*), the Developer shall be required to pay, along with the immediately subsequent tranche of the Consideration payable by the Developer to Authority in terms of the Schedule 3 (*Schedule of Payments*), an amount equal to the amount by which the actual cost of Provisional Sum Items comprised in the Mandatory Project is lower than the sums allocated for such Provisional Sum Items.

ARTICLE 32: COMPETING FACILITIES AND VARIATION IN RETURNS

32.1 **Competing Facility**

32.1.1 The Developer agrees and acknowledges that the Railway shall, directly or through its nominees/ representatives (including Authority), be entitled to develop other land and airspace adjoining and/ or near the Project Land (each a “**Competing Facility**”) in one or more lots, in such manner and on such terms as the Railways or such nominees/ representative deem fit.

32.1.2 The Developer shall have no rights (including specifically any rights of pre-emption) with respect to any such Competing Facility, nor shall the Developer be permitted any alternation, variation, or modification of the Agreement (including specifically the extent of Consideration, Lease Period and/or the Term) consequent to any such development of a Competing Facility by the Railway (and/ or its nominee/ representative).

32.2 **Effect of Variation in Returns**

32.2.1 The Developer agrees and acknowledges that that Authority, the Railway or any of their employees, officials, agents, representatives, other contractors, have not made any representation to the Developer with respect to the feasibility or viability of the Project, or the potential revenue/ returns to the Developer from Project, including specifically the Commercial Development Project or the Station Facility Management (where, and for the duration that the same has been awarded to the Developer, in accordance with the terms hereof and the Station Facility Management Agreement), and that they shall have no liability to the Developer in respect thereof (including any shortfall or decrease in the projected revenues/ returns). The Developer further agrees and acknowledges that it shall have no claims against, and does hereby expressly waive all claims against, Authority, the Railway and all their employees, officials, agents, representatives, and other contractors in this regard.

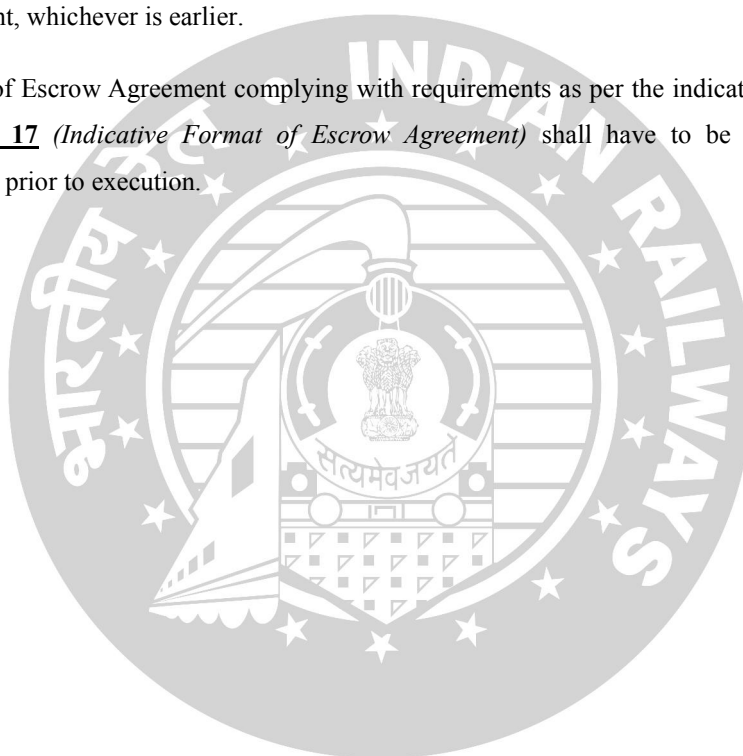
32.2.2 Without prejudice to the generality of the foregoing, it is expressly agreed and acknowledged that except as specifically provided under Article 30, no adjustment or alteration of the Consideration payable under the Agreement or the term hereof, shall be permitted on account of any

alteration or variation in the feasibility or viability of the Project, or the any revenues/ returns therefrom (including the Commercial Development Project or the Station Facility Management Agreement).



ARTICLE 33: ESCROW ACCOUNT

- 33.1 The Developer shall prior to the Appointed Date, execute the Escrow Agreement and establish the Escrow Account in accordance with the Escrow Agreement, in each case to the satisfaction of Authority.
- 33.2 The Developer, shall, on and from the Appointed Date, deposit all Receivables into the Escrow Account. Any withdrawal from the Escrow Account shall thereafter, be made only in accordance with the terms of the Agreement and the Escrow Agreement.
- 33.3 The Escrow Account may be closed with the mutual consent of the Parties after the entire amount of the Consideration (plus any interest) under the Agreement has either been paid by the Developer to Authority or has been recovered by Authority from the Escrow Account in terms of the Escrow Agreement, whichever is earlier.
- 33.4 The draft of Escrow Agreement complying with requirements as per the indicative draft as set out in **Schedule 17** (*Indicative Format of Escrow Agreement*) shall have to be pre-approved by the Authority prior to execution.



ARTICLE 34: INSURANCE

34.1 Maintenance of Insurance

34.1.1 The Developer shall effect and maintain, at its own cost, either directly or through its principal Sub-Contractor, during the Construction Period and the Term, Contractor All Risk (CAR) Insurance and other 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, in respect of the entire Project. The Developer shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on Authority as a consequence of any act or omission of the Developer, its Sub-Contractors, End Users, personnel, agents etc.

34.1.2 Without prejudice to the generality of the foregoing, the Developer shall for the duration that the Assets and the Project Utilities (or the relevant parts thereof) are in possession of the Developer under the Agreement (or are otherwise required to be designed, developed, constructed, operated and/ or maintained by the Developer), procure the insurance cover in respect of:

- (a) loss, damage or destruction of the Assets, and Project Utilities, including the Station Development Assets, the Station Development Project Utilities, the Redevelopment Assets and the Redevelopment Project Utilities;
- (b) comprehensive third party liability insurance including injury to or death of personnel of the Authority or their respective agents and contractors or others who may enter or utilize the Project;
- (c) the Developer's general liability arising out of the Agreement;
- (d) liability to third parties for goods or property damage;
- (e) workmen's compensation insurance; and
- (f) any other insurance that maybe necessary to protect the Developer and its employees, and contracts including in respect of all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items (a) and (e) above.

34.2 Authority to be Co-insured

34.2.1 The Developer shall ensure that in each insurance policy, Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance to the Developer, who, in turn shall compensate Authority for such losses as shall be assessed by Authority. For the avoidance of doubt, the level of insurance to be maintained by the Developer after repayment of the Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

34.3 Notice of Insurance

34.3.1 Not later than 45 (forty five) days from the Effective Date, the Developer shall by notice furnish to Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 34. Within 30 (thirty) days of receipt of such notice, Authority may require the Developer to effect and maintain such other insurances as may be necessary pursuant hereto and the Developer shall forthwith obtain such additional insurances.

34.4 Evidence of Insurance Cover

34.4.1 All insurance obtained by the Developer in accordance with this Article shall be maintained with insurer or reinsurers and on terms consistent with Good Industry Practice. Within 45 (forty five) days of obtaining any insurance cover, the Developer shall furnish to Authority, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premium payment receipts in respect of such insurance received from each insurance carrier and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by Authority.

34.5 Failure to Insure

34.5.1 If the Developer shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, Authority shall have the option to keep in force any such insurance, and pay such premium and recover the costs

thereof from the Developer, and/ or for the purposes of computation of payments to the Developer, treat the insurance cover i.e. the maximum sums, which such insurance was providing for had it been in force and effect, as being deemed to have been received by the Developer.

34.6 Waiver of Subrogation

34.6.1 All insurance policies supplied by the Developer shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, Authority, and their assigns, affiliates, employees, insurers, representatives and underwriters and of any right of the insurers of 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.

34.7 Developer's waiver

34.7.1 The Developer hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, Authority, and their assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers, representatives and underwriters, which the Developer 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 Developer pursuant to the Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

34.8 Application of insurance proceeds

34.8.1 The proceeds from all insurance claims, except life and injury, shall be paid into the Escrow Account and such amount shall be utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement or delivery of the Assets and Project Utilities and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

CHAPTER V: FORCE MAJEURE SUBSTITUTION AND TERMINATION



ARTICLE 35: FORCE MAJEURE

35.1 Force Majeure Event

35.1.1 The Developer or Authority, as the case may be, shall be entitled to initially suspend the performance of its respective obligations under the Agreement to the extent that the Developer or Authority, as the case may be, is unable to render such performance due to a Force Majeure Event.

35.1.2 In the Agreement, no event or circumstance and/or no combination of events and circumstances shall be treated as a Force Majeure Event unless it satisfies all the following conditions

- (a) materially and adversely affects the performance of an obligation;
- (b) are beyond the reasonable control of the affected Party;
- (c) such Party could not have prevented or reasonably overcome with the exercise of Good Industry Practice or reasonable skill and care;
- (d) do not result from the negligence or misconduct of such Party or the failure of such Party to perform its obligations hereunder; and
- (e) which, by itself or consequently, has an effect described in Article 35.1.1.

35.1.3 “**Force Majeure Event**” includes the following events and/ or circumstances to the extent that they or their consequences satisfy the requirements set forth in Article 35.1.2:

- (a) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy in each case involving or directly affecting the Project Land;
- (b) revolution, riot, insurrection or other civil commotion, act of terrorism or sabotage in each case within the Project Land or near vicinity;
- (c) nuclear explosion, radioactive or chemical contamination or ionizing radiation directly affecting the Project Land and/or the Assets, unless the source or cause of the explosion, contamination, radiation or

hazardous thing is brought to or near the Project Land by the Developer or any Affiliate of the Developer or any Sub-Contractor of the Developer or any of their respective employees, servants or agents;

- (d) strikes, working to rule, go-slows and/or lockouts which are in each case widespread, nationwide or political and affects the Project Land;
- (e) any effect of the natural elements, including lightning, fire, earthquake, unprecedented rains, tidal wave, flood, storm, cyclone, typhoon or tornado, within the Project Land or near vicinity;
- (f) explosion (other than a nuclear explosion or an explosion resulting from an act of war) within the Project Land or near vicinity;
- (g) epidemic or plague within the Project Land or near vicinity; and
- (h) any event or circumstances of a nature analogous to any events set forth in Article 35.1.3 (a) to Article 35.1.3 (g) within the Project Land or near vicinity.

It is clarified that non-availability of any plant, equipment, materials or financial resources for any reason whatsoever shall not be deemed to be an event of Force Majeure.

35.1.4 Procedure for Force Majeure

- (a) If a Party claims relief on account of a Force Majeure Event, then the Party claiming to be affected by the Force Majeure Event shall, immediately on becoming aware of the Force Majeure Event, give notice of and describe in detail: (i) the Force Majeure Event(s) that has occurred; (ii) the obligation(s) affected as described in this Article 35; (iii) the dates of commencement and estimated cessation of such event of Force Majeure; and (iv) the manner in which the Force Majeure Event(s) affect the Party's ability to perform its obligation(s) under the Agreement. No Party shall be able to suspend or excuse the non-performance of its obligations hereunder unless such Party has given the notice specified above. The Parties expressly agree that payment of Annual Lease Rent shall not be suspended during the pendency of Force Majeure Event and/or its effect.

- (b) The affected Party shall have the right to suspend the performance of the obligation(s) affected as described in Article 35.1.4 (a) above, upon delivery of the notice of the occurrence of a Force Majeure Event in accordance with Article 35.1.4 (a) above. The affected Party, to the extent rendered unable to perform its obligations or part thereof under the Agreement, as a consequence of the Force Majeure Event, shall be excused from performance of the obligations provided that the excuse from performance shall be of no greater scope and of no longer duration than is reasonably warranted by the Force Majeure Event.
- (c) The time for performance by the affected Party of any obligation or compliance by the affected Party with any time limit affected by Force Majeure Event, and for the exercise of any right affected thereby, shall be extended by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the event of Force Majeure Event.
- (d) Each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event.
- (e) The Party receiving the claim for relief under Force Majeure Event shall, if it wishes to dispute the claim, give a written notice of Dispute to the Party making the claim within 30 (thirty) days of receiving the notice of claim. If the notice of claim is not contested within 30 (thirty) days as stated above, all the Parties shall be deemed to have accepted the validity of the claim. If any Party disputes a claim, the Parties shall follow the procedures set forth in Article 41.

35.1.5 Mitigation of Force Majeure

- (a) The Party claiming to be affected by a Force Majeure Event shall take all reasonable steps to prevent, reduce to a minimum and mitigate the effect of such Force Majeure Event. The affected Party shall also make efforts to resume performance of its obligations under the Agreement as soon as possible and upon resumption, shall forthwith notify the other Party of the same in writing. Further, each Party shall bear its own costs, if any, incurred as a consequence of the Force Majeure Event and the time for performance by the affected Party of any obligations or compliance by the affected Party with any time limit affected by Force Majeure Event and for the exercise of any right affected thereby, shall be extended as may be decided by the Nodal Officer by the period during which such Force Majeure Event continues and by such additional period thereafter as is necessary to enable the affected Party to achieve the level of activity prevailing before the Force Majeure Event, provided the End Date remains as it is.

ARTICLE 36: EXTENSION OF TIME

36.1 Extension of time for Force Majeure Event

36.1.1 If at any time, during the Term, the performance in whole or in part by either Party of any obligation under the Agreement shall be prevented or delayed by reason of any Force Majeure Event, and notice of the happening of any such event is given by the affected Party to the other Party in accordance with Article 35, neither Party shall by reason of such event, be entitled to terminate the Agreement nor shall either Party have any claim for damages against the other in respect of such non-performance or delay in performance and the Project (or the parts so affected) due to such Force Majeure Event and the Agreement shall be resumed as soon as practicable after such event has come to an end or ceased to exist and the decision of the Authority as to whether the Project have been so resumed or not shall be final and conclusive.

36.2 Extension of time for Construction without damages

36.2.1 Subject to any requirement in the Agreement as to completion of construction of any portion or portions of the Project before completion of the whole, the Developer shall fully and finally complete the construction of the Project on or prior to the Guaranteed Date, and in any event in accordance with the Project Schedule, in terms of the following Sub-Articles:-

- (a) If any modifications has been ordered by any Government Authority while granting Applicable Permits or subsequent to grant of such Applicable Permits which in the opinion of the Nodal Officer have materially, changed the scope of the Project (or any part thereof), then such extension of the contracted date of completion may be granted as shall appear to Nodal Officer to be reasonable in the circumstances, provided however, the Developer shall be responsible for requesting such extension of the date as may be considered necessary as soon as the cause thereof shall arise and in any case not less than one month before the expiry of the respective Guaranteed Date fixed for completion of the Project (or relevant part thereof).

- (b) If, the progress of work has at any time been delayed by any act or neglect of Authority, or by other contractor employed by the Authority (or Railway) in executing the work not forming part of the Project but on which Developer's performance necessarily depends or by reason of proceedings taken or threatened by or dispute with adjoining or neighboring owners or public authority arising otherwise through the Developer's own default etc. or by the delay authorized by the Nodal Officer pending arbitration, then upon happening of any such event causing delay, the Developer shall immediately give notice thereof in writing to the Nodal Officer within 15 (fifteen) days of such happening but shall nevertheless make constantly his best endeavours to reduce or make good the delay and shall do all that may be reasonably required of him to the satisfaction of the Nodal Officer to proceed with the Project. The Developer may also indicate the period for which the Project is likely to be delayed and shall be bound to ask for necessary extension of time. The Nodal Officer on receipt of such request from the Developer shall consider the same and if in the opinion of the Nodal Officer the reason for the delay is genuine, he shall grant such extension of time as in his opinion is reasonable having regard to the nature and period of delay and the type and quantum of work affected thereby. No other compensation to the Developer or damages to Authority shall be payable for part of the Project so carried forward to the extended period of time and the terms and conditions of Agreement would continue to be applicable as if such extended period of time was originally provided in the Agreement.
- (c) In the event of any failure or delay by Authority to hand over the right of way to the Site, Station Development Land and /or the Redevelopment Land, within their respective time periods, to the Developer, such failure or delay shall in no way affect or vitiate the Agreement or alter the character thereof or entitle the Developer to damages or compensation thereof, but in any such case, the Authority grant such extension or extensions of the Completion Date for the

Project (or such part thereof, as applicable), as may be considered reasonable.

- (d) It is clarified that where an extension of time has been granted under the terms of this Article 36.2 in respect of a delay in the Project, the Developer shall not, be liable to pay any damages in respect of any consequent failure to achieve the relevant Key Dates and milestones as specified under **Schedule 4** (*Project Schedule*).

36.3 Extension of time for Construction on account of delay by the Developer

36.3.1 The time for the execution of the Project or part of the Project specified in the Agreement shall be deemed to be the essence of the Agreement and the Project must be completed (and the Completion Clearance obtained) in accordance with the Project Schedule. If the Developer fails to complete the Project in accordance with the Project Schedule, other than the reasons specified under Article 36.1 and Article 36.2, the Nodal Officer may, if satisfied that the Project can be completed by the Developer within reasonably short time thereafter, allow the Developer extension of time for achievement of the relevant Key Date set out in **Schedule 4** (*Project Schedule*), as the Nodal Officer and/or Authority decide.

36.3.2 Notwithstanding any such extension, Authority, shall in respect of such delay, be entitled without prejudice to any other right and remedy available in this regard, to recover from the Developer liquidated damages as determined in accordance with Article 12 and **Schedule 4** (*Project Schedule*).

36.3.3 The Parties agree that the aforesaid amount, constitutes a genuine pre-estimate of the loss and damage occurring to Authority on account of such delay and failure on the part of the Developer to complete the Project, within the specified time under the Agreement, and is not by way of penalty.

36.3.4 For the purpose of this Article the maximum extension cumulatively for all Key Dates taken together that can be granted shall not exceed 100 weeks or as specified in SCDA.

36.3.5 Provided that the total amount of liquidated damages under this condition shall not, exceed maximum amount as specified under **Schedule 4** (*Project Schedule*), in respect of the relevant Key Date.

36.3.6 Provided, also that if the Authority is not satisfied that the Project can be completed by the Developer and in the event of failure on the part of the Developer to complete the Project within extension of time allowed as aforesaid, Authority shall be entitled without prejudice to any other right or remedy available in that behalf, to appropriate the

Performance Guarantee for Project, Performance Guarantee for Mandatory Project (as applicable) and/or SFMA Performance Guarantee (as applicable), and terminate the Agreement in accordance with Article 38.

36.4 Extension of time of payment for delay on account of the Developer

36.4.1 The time fixed for making various payments (including the Consideration) to Authority by the Developer specified in the Agreement shall be deemed to be the essence of the Agreement and the Developer must make these payments not later than the dates as specified in the Agreement.

36.4.2 If the Developer fails to make the payments within the time as specified in the Agreement it shall be construed as a Payment Default on behalf of the Developer and Authority may, if satisfied that the overdue payment can be made by the Developer within reasonably short time thereafter allow the Developer extension of date(s) of such payment(s) as the Nodal Officer may decide. On such extension, Authority will be entitled without prejudice to any other right and remedy available on that behalf to recover from the Developer damages as agreed and not by way of penalty a sum computed at an annual rate of interest of 3% (three percent) higher than the interest rate taken in **Schedule 3** (*Schedule of Payments*) for the actual delay (in number of days) in making the payment. For the purpose of this Article the maximum extension that can be granted may not exceed one year.

36.5 Extension of time of Payment without damages

36.5.1 The Developer shall fully pay to Authority all payments specified in the Agreement by the due date specified in the Agreement, provided that where the construction of the Project gets delayed due to the reason specified in Article 36.2.1(c), then on specific request of the Developer, Authority shall grant such extension(s) as may be considered reasonable to the due date(s) of the payment of the Consideration and such extended period shall be considered as interest free period.

ARTICLE 37: EXPIRY

- 37.1 Upon Expiry or earlier termination, as the case may be, the Project Land, together with all Assets, Project Utilities and work-in-progress existing on the Project Land shall automatically vest in Authority and the Agreement shall stand terminated.
- 37.2 Notwithstanding the foregoing provisions of this Article 37, the vesting of the Project Land, together with all Assets, Project Utilities and work-in-progress existing on the Project Land, upon and such expiry shall be undertaken, and the rights and obligations of the Parties consequent to vesting, shall be determined in accordance with the provisions of Article 39.



ARTICLE 38: TERMINATION & SUBSTITUTION

38.1 Termination

38.1.1 The Agreement may be terminated prior to the expiry in accordance with the following:

- (a) By Authority at its discretion in accordance with Article 38.1.2;
- (b) By Authority upon the occurrence of Developer's Event of Default in accordance with Article 38.1.3;
- (c) By the Developer upon the occurrence of an Authority Events of Default in accordance with Article 38.1.4;
- (d) By the Parties with mutual consent.

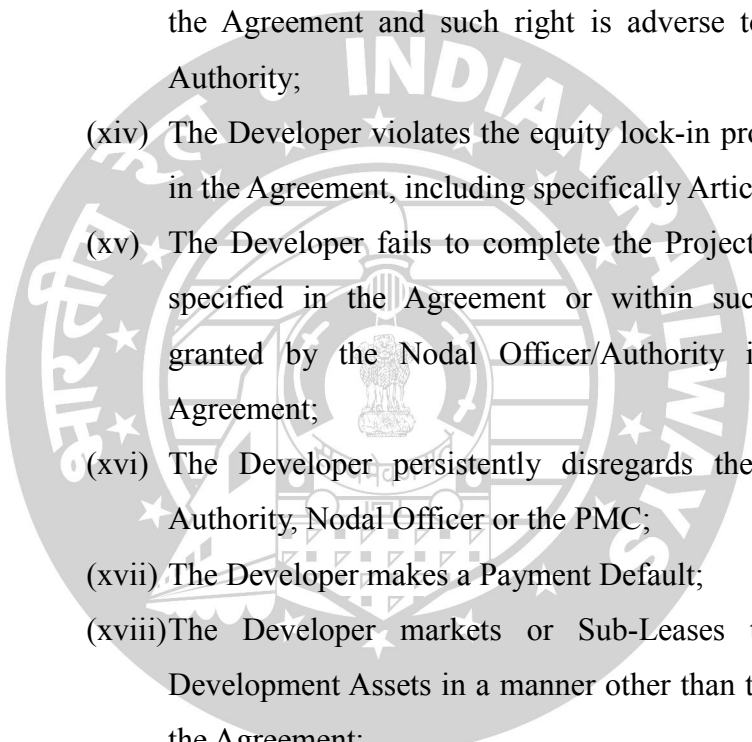
38.1.2 Termination by Authority

- (a) Without prejudice to the right of Authority to terminate the Agreement in accordance with Article 38.1.3 below, on account of the Developer's Event of Default, Authority shall, at any time after the right of way/ access to Project Land or part thereof having been provided by Authority to the Developer, be entitled to determine and terminate the Agreement, where the Project Land is required for Railway use.
- (b) In such event, notwithstanding anything to the contrary, Authority shall be entitled to determine and terminate the Agreement by giving a [60 (sixty) days] termination notice, and the provisions of Article 38.1.5, shall not be applicable to any such termination, and Authority shall not be required to the Notice of Intention to Terminate, in respect of such termination. Further, it is clarified that the Lenders shall not have any right to substitute the Developer, in respect of any termination pursuant to this Article 38.1.2.

38.1.3 Termination by Authority on Developer's Events of Default

(a) In the event that the any of the following events of default, shall have occurred the Developer shall be deemed to be in default of the Agreement (“Developer’s Events of Default”), save and except to the extent that the same is attributable to a Force Majeure Event and/ or an Authority’s Events of Default. The defaults referred to above shall mean the following default of obligations of the Developer under the Agreement:

- (i) The Developer becomes bankrupt or insolvent;
- (ii) The Developer is under liquidation, or winding up proceedings are in progress in respect of the Developer;
- (iii) The Developer assigns the Agreement or any part thereof otherwise than as permitted under the Agreement or by Authority;
- (iv) The Developer abandons the Agreement;
- (v) The Developer fails to comply with any of its obligations in respect of the Station Development Project or the Redevelopment Project, including any failure to comply with the completion milestones for the same set forth in the SCDA and/ or Key Dates as per Schedule;
- (vi) The Developer fails to comply with any Specifications and/ or the DPR;
- (vii) The Developer does or permits to do any act, matter, deed or thing in violation of Applicable Law and/or Applicable Permits;
- (viii) The Developer fails to provide, renew or replenish or otherwise maintain the Performance Guarantee for Project or the Performance Guarantee for Mandatory Project in accordance with the Agreement or SFMA Performance Guarantee in accordance with Station Facility Management Agreement;
- (ix) The Developer fails to provide, increase or replenish or otherwise maintain the Security Deposit in accordance with the Agreement;

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- (x) The Developer operates the Escrow Account otherwise in accordance with the Agreement and the Escrow Agreement, or otherwise violates the terms of the Escrow Agreement;
 - (xi) The Developer fails to maintain insurance (s) as required under the Agreement;
 - (xii) The Developer uses or permits or causes the use of the Project Land for purposes other than those specified in the Agreement;
 - (xiii) The Developer sets up or claims an interest in the Project Land contrary to the rights granted to the Developer through the Agreement and such right is adverse to the interest of Authority;
 - (xiv) The Developer violates the equity lock-in provisions set forth in the Agreement, including specifically Article 40;
 - (xv) The Developer fails to complete the Project within the time specified in the Agreement or within such extensions as granted by the Nodal Officer/Authority in terms of the Agreement;
 - (xvi) The Developer persistently disregards the instructions of Authority, Nodal Officer or the PMC;
 - (xvii) The Developer makes a Payment Default;
 - (xviii) The Developer markets or Sub-Leases the Commercial Development Assets in a manner other than those specified in the Agreement;
 - (xix) The Developer commits any other material breach of the Agreement, or there occurs an event that has a Material Adverse Effect on the ability of the Developer to perform the Agreement; or
 - (xx) The Developer violates any other term or condition that leads to termination of the Agreement as specified in the bid documents during the bid for the Project.
- (b) Authority shall, upon the occurrence of a Developer's Event of Default, which, is not remedied within the Cure Period upon receipt

of Notice of Intention to Terminate from Authority, be entitled to terminate the Agreement. Provided that Lenders' Representative shall have the right to substitute the Developer with a Nominated Company upon the occurrence of a Developer's Event of Default, in accordance with the Agreement and the Substitution Agreement.

- (c) Provided however, any default, deficiency or event of default in relation to Station Facility Management Agreement shall be dealt with in accordance with the terms and conditions of the Station Facility Management Agreement.

38.1.4 Termination by Developer on Authority's Events of Default

- (a) In the event that the any of the following events of default, shall have occurred, the Authority shall be deemed to be in default of the Agreement ("Authority's Events of Default"), save and except to the extent that the same is attributable to a Force Majeure Event and/ or a Developer's Event of Default. The defaults referred to above shall mean the following default of obligations of Authority under the Agreement:
- (i) Authority fails to provide to the Developer the right of way to the Site, Redevelopment Land or the Station Development (as applicable), even after six months of extension in terms of the Agreement; or
 - (ii) Authority breaches any other obligation(s) which has a Material Adverse Effect on the Developer's ability to perform its obligations under the Agreement.
- (b) The Developer shall, upon the occurrence of a Authority Events of Default, which, is not remedied within the Cure Period upon receipt of Notice of Intention to Terminate from the Developer, be entitled to terminate the Agreement. Provided however that the Developer shall have a right to terminate the Agreement on grounds of Authority Events of Default, only within one year from the Effective Date.

38.1.5 Notice of Intention to Terminate

- (a) Subject to Article 38.1.2 and without prejudice to any other rights or remedies which the non-defaulting Party may have under the Agreement or under the Applicable Laws, upon the occurrence of either a Developer's Event of Default or an Authority's Events of

Default, the defaulting Party shall be liable for the breach caused and consequences thereof and the non-defaulting Party shall have the right to issue a notice of intention to terminate (the “**Notice of Intention to Terminate**”). Provided that where the Notice of Intention to Terminate is issued by Authority pursuant to a Developer’s Event of Default, a copy of the same shall also be provided by Authority to the Lender’s Representative.

- (b) Upon the issuance of a Notice of Intention to Terminate, the defaulting Party shall have the right to rectify or cure the breach within the Cure Period.
- (c) If the breach is not rectified by the defaulting Party within the Cure Period, the non-defaulting Party shall have the right to terminate the Agreement by issuance of a Termination Notice.
- (d) Notwithstanding anything contained in the Agreement, the Developer shall not be entitled to exercise the right to issue Notice of Intention to Terminate after expiry of one year from the Effective Date.

38.2 Substitution of the Developer

38.2.1 Substitution by Lenders’ Representative: In the event of Developer’s default, Authority shall, if there be any Lenders, send a copy of the Termination Notice to the Lenders’ Representative to inform and grant 15 (Fifteen) days to the Lenders’ Representative, for making a representation on behalf of the Lenders stating the intention to substitute the Developer. In case Authority receives a representation on behalf of the Lenders, within the aforesaid period, Authority shall withhold the termination for a period not exceeding 180 (one hundred and eighty) days, for enabling the Lenders’ Representative to exercise the Lenders’ right of substitution in accordance with the Substitution Agreement, and substitute the Developer with a Nominated Company.

38.2.2 Substitution by Authority: In the event that no company is nominated by the Lender’s Representative to act as the Nominated Company or the company nominated by the Lenders’ Representative in terms of Article 38.2.1 is not acceptable to Authority, it may either substitute the Developer with a Nominated Company, identified by Authority in accordance with the Substitution Agreement, or terminate the Agreement.

38.2.3 Substitution Process: While carrying out substitution, the Lender’s Representative or Authority, as the case may be, shall invite competitive bids from the prospective parties for acting as the Nominated Company and substituting the Developer. The financial bidding criteria for the bid shall be a Substitution Premium to be paid by the Nominated

Company as a consideration to Authority. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Developer in terms of the Agreement, Financing Agreement, Letter of Allotment/ Sub-Lease Deeds and sub-contracts with the Sub-Contractors, and which shall include but not be limited to overdue and future payments towards taxes to be paid to any Governmental Authority, repayment or refunds to third parties, Lease Premium (instalments and interests thereof) to be paid to Authority, Annual Lease Rent to be paid to Authority, liquidated damages to be paid to Authority, payment to Sub-Contractors relating to the Project, expenses incurred and claims by Authority on the Project due to the Developer's default (including any Developer's Event of Default) in terms of the Agreement to be paid to Authority, servicing of Debt Due to the Lenders etc. Moreover, as part of the condition of bidding, the Nominated Company shall be required to invest an additional minimum amount in the Project within 30 (thirty) days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified here above.

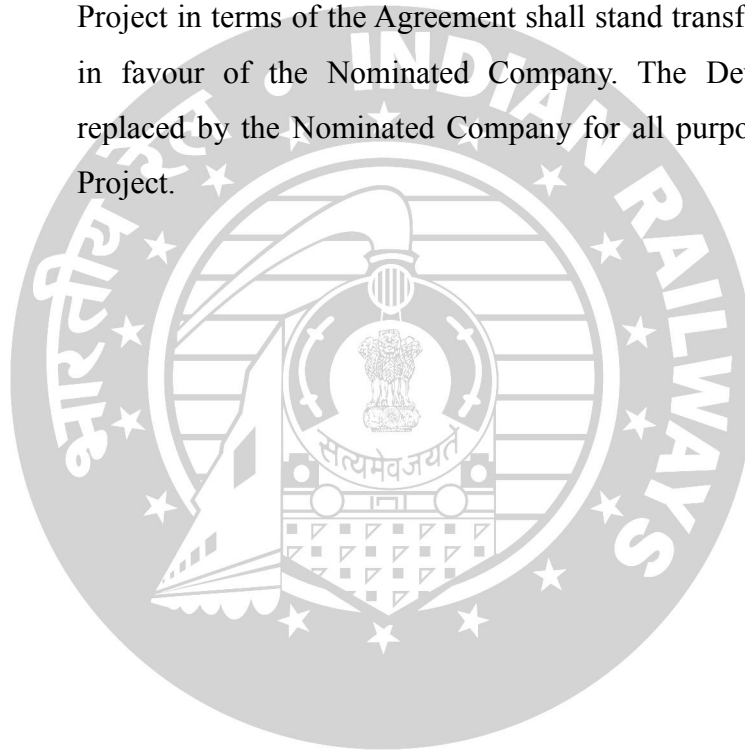
38.2.4 Consequences of Substitution

- (a) Authority shall grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into Sub-Contracts) together with all other rights of the Developer under the Agreement, subject to fulfillment of all the Developer's obligation under the Agreement by such Nominated Company, for the remainder of the Term. Such rights shall be granted by Authority through the Novation of the Agreement, if applicable, in favour of the Nominated Company.

For the purpose of this Article term 'Novation' shall mean the process or the act of replacing the Developer in any agreement including sub-lease in respect of the Commercial Development Assets by another party such that the agreement transferred by the novation process transfers all rights, duties and obligations from the Developer/original obligor to the transferee/ new obligor.

- (b) Authority shall also execute a new Substitution Agreement with the Nominated Company and the Lenders, if there be any.

- (c) All Sub-Contracts and agreements in respect of the Project including Escrow Agreement and Financing Agreements and all Sub-Contracts executed by the Developer shall stand transferred and novated in favour of the Nominated Company. Further all rights of the Developer on the Project Land, Assets and Project Utilities in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. All approvals/clearances of Authority received by the Developer shall stand transferred and novated in favour of the Nominated Company. All letter of allotments, Sub-Lease Deeds or any other agreements executed by the Developer for marketing the Project in terms of the Agreement shall stand transferred and novated in favour of the Nominated Company. The Developer shall get replaced by the Nominated Company for all purposes related to the Project.



38.3 Termination Payment and Substitution Payment

38.3.1 Termination Payment: In the event of termination of the Agreement, the Termination Payment payable by Authority to the Developer shall be determined as follows:

(a) Termination for convenience by Authority: In the event of any termination by Authority pursuant to Article 38.1.2, Authority shall pay to the Developer, as Termination Payment, an amount determined as under:

(i) *In the event that termination occurs prior to the expiry of $\frac{2N}{3}$ years from the Effective Date*

$$\text{Termination Payment} = \left\{ \frac{5}{6} \times \frac{2N - 3n}{2N} + \frac{1}{6} \right\} \times \{C + \text{Cost1} + \text{Cost2}\} \times \frac{WPI_T}{WPI_E}$$

(ii) *In the event that termination occurs after the expiry of $\frac{2N}{3}$ years from the Effective Date,*

$$\text{Termination Payment} = \left\{ \frac{N - n}{2N} \right\} \times \{C + \text{Cost1} + \text{Cost2}\} \times \frac{WPI_T}{WPI_E}$$

In each case, as reduced by the amount of Distributions withdrawn by the Developer till the date of termination.

where,

n = Number of full completed years from the Effective Date till the Transfer Date subsequent to the termination of the Agreement + One (1);

N = Term in number of years;

C = Aggregate of Lease Premium (excluding any interest) and Annual Lease Rent (Net Present Value as on Effective Date) paid by the Developer to Authority as of the Transfer Date subsequent to the termination of the Agreement.

Cost 1 = Aggregate of (i) Estimated Project Cost of such part of the Mandatory Project (in respect of which Completion Clearance has been issued) or actually incurred by the Developer, whichever is lower, and, (ii) in respect of other parts of the Mandatory Project, the relevant percentage of the Estimated Project Cost thereof or actually incurred by the Developer, which ever is lower, as determined on the basis of the corresponding estimated percentage completion indicated against the last Key Date achieved and certified of part of the relevant works.

Cost 2 = Per sq. m. cost of construction of the Commercial Development Project (as set out in **Schedule 26** (*Estimated Project Cost*) multiplied by the Built Up Area of the Commercial Development Project in respect of which Completion Clearance has been issued or actually incurred by the Developer, which ever is lower.

WPI_T = the wholesale price index as prevailing on the Transfer Date subsequent to the termination of the Agreement;

WPI_E = the wholesale price index as prevailing on the Effective Date;

(b) ***Termination pursuant to Developers Event of Default, pursuant to Article 38.1.3***

(i) **Termination prior to commencement of the Commercial Operations:** In the event of such termination before the commencement of the Commercial Operations, Authority shall pay to the Developer, as Termination Payment in 5 (five) equated yearly instalments and only after selection of new developer for the Project, an amount equal to the sum of:

- (1) 85% (eighty five percent) of the total amount of Consideration (excluding any interest and Annual Lease Rent) paid by the Developer to Authority till the date of termination

- (2) To the extent that a Completion Clearance has been issued in respect of all or any part of the Mandatory Project, then an amount equivalent to 75% (seventy five percent) of the cost of construction of such part of the Mandatory Project, which amount shall be determined on the basis of the Estimated Project Cost of such part of the Mandatory Project;

as reduced by any Distributions withdrawn by the Developer till the date of termination.

(ii) Termination after Commencement of Commercial Operations:

In the event of such termination after the commencement of the Commercial Operation Authority shall pay to the Developer, as Termination Payment in 5 (five) equated yearly instalments and only after selection of new developer for the Project, an amount equal to the sum of:

- (1) 85% (eighty five percent) of the total amount of Consideration (excluding any interest and Annual Lease Rent) paid by the Developer to Authority till the date of termination; and
- (2) 75% (seventy five percent) of the Estimated Project Cost of the Mandatory Project;

as reduced by the amount of Distributions withdrawn by the Developer till the date of termination.

(c) Termination pursuant to Authority Events of Default, pursuant to Article 38.1. 4

- (i) In the event of any termination by the Developer pursuant to Article 38.1.4 Authority shall pay to the Developer, as Termination Payment, an amount equal to the sum of following and with simple interest @ 8% (eight percent) per annum calculated from the date of receipt of respective payments by the Authority:

- (1) The total amount of Consideration (including any interest) paid by the Developer to Authority till the date of termination;
- (2) The aggregate of the Estimated Project Cost of such part of the Mandatory Project and Commercial Development Project in respect of which Completion Clearance has been issued and, in respect of other parts of the Mandatory Project and Commercial Development Project, the relevant percentage of the Estimated Project Cost thereof, as determined on the basis of the corresponding estimated percentage completion indicated against the last Key Date achieved and certified of part of the relevant works.

as reduced by any Distributions withdrawn by the Developer till the date of termination.

Provided that the extent of the Termination Payment under this Article 38 shall be reduced by pursuant to a Developer's Event of Default, Authority shall pay a Termination Payment to Developer as follows after recovering the outstanding dues toward Annual Lease Rent and any claims for losses/damages suffered by Authority, or by the Railway Administration (or their employees, officials, contractors, agents or representatives) due to any act, omission or negligence by the Developer or its Sub Contractors/ End Users. Further the applicable amount of the Termination Payment shall also stand reduced by all other amounts so specified under the Agreement, including any amounts payable by Authority to the End-Users in accordance with Article 39 hereof. If an Escrow Account exists at the time of any such termination, the Termination Payment shall be deposited in the Escrow Account and the Developer shall get its dues through the Escrow Account, in accordance with the Escrow Agreement. Provided that any Termination Payment to the Developer shall be made after all encumbrances including mortgage, third party rights over the Land and Assets are removed by the Developer.

38.3.2 Substitution Payment

- (a) The Developer shall be entitled to a substitution payment as compensation towards substitution only if the Nominated Company has paid a positive Substitution Premium to Authority and invested the required minimum amount in the Project towards the overdue payment liabilities specified hereinabove. If the Substitution Premium paid by the Nominated Company is positive and sufficient, the Developer shall be entitled to the Substitution Premium subject to such payment not exceeding 85% (eighty five percent) of the total amount of Equity and Subordinated Debt Due as on the date of 15 (fifteen) days notice. If the Substitution Premium paid by the Nominated Company is more than this amount, the remaining amount shall be paid to Authority. It is clarified that the Developer shall not be entitled to any return on Equity.
- (b) If the Substitution Premium paid by the Nominated Company is less than the maximum entitlement of the Developer in terms of the Article 38.3.2 (a) above, the Developer shall be entitled to only the extent of Substitution Premium paid by the Nominated Company. However, if the Substitution Premium offered by the Nominated Company is negative, no compensation shall be paid to the Developer and the resulting cost due to negative Substitution Premium shall be borne by the Lenders and Authority in the following manner :
- (i) If the substitution is done by the Lenders' Representative, the entire cost shall be borne by the Lenders ;
- (ii) If the substitution is done by Authority, the cost shall be borne in the following order:
- (1) The Lenders shall bear the cost up to an amount equal to the Debt Due by way of forgoing it to the extent of the entire amount of Debt Due to that extent;
- (2) Authority shall bear the remaining cost, if such cost is not fully met through the provisions of the sub-article (1) above.

- (c) An independent chartered accountant/auditor, from the panel set forth in **Schedule 30** (*Panel of Chartered Accountants*) shall be appointed by Authority or the Lender, as the case may be, for audit of the accounts of the Developer for arriving at the payments due for refund to the Developer as above. The cost of the independent chartered accountant/auditor shall be deducted from the amount due for refund to the Developer in terms of Article 38.3.2(b) above.

38.3.3 Claiming Termination Payment & Substitution Payment

- (a) After termination of the Agreement or substitution of the Developer by a Nominated Company, the Developer shall prepare and furnish to the Nodal Officer an account giving full and detailed particulars of all claims for payment to which the Developer may consider himself entitled to in terms of the Agreement. Notwithstanding any such claim, the Developer shall be paid the relevant extent of Substitution Payment and Termination Payment strictly in terms of the Agreement and the decision of Authority in respect of such payments shall be final and binding on the Developer.

38.3.4 Signing of "No Claim" Certificate

- (a) Any payment towards the relevant extent of the Termination Payment and the Substitution Payment under Article 38.3.1 or Article 38.3.2 above, shall be made by Authority only after receipt of a No-Claim Certificate from the Developer declaring that the payments received by the Developer is full and final and it has no further claim against the Project. The Developer shall not be entitled to make any claim whatsoever against Authority or by virtue of or arising out of the Agreement, nor shall Authority entertain or consider any such claim, if made by the Developer after he shall have signed a "no claim" certificate in favour of Authority in such form as shall be required by Authority after the amount of the relevant payment is finally assessed by Authority. The Developer shall be debarred from disputing the correctness of the assessment of payment covered by "no claim" certificate or demanding a clearance to arbitration in respect thereof.

38.3.5 Post Payment Audit

- (a) It is an agreed term of Agreement that Authority reserves to itself the right to carry out a post-payment audit and/or technical examination of the Developer's claim including all supporting details, and to make a claim on the Developer for the refund of any excess amount paid to him if as a result of such examination any over-payment to him is discovered to have been made in respect of Termination Payment, Substitution Payment or terminal value under the Agreement.

38.4 Invocation of Performance Guarantees

- 38.4.1 Notwithstanding anything contained in this Article 38, in the event of issue of Notice of Intention to Terminate by Authority due to Developer's Event of Default, whether leading to Substitution or Termination, the Performance Guarantee for Project, the Performance Guarantee for Mandatory Project and/or SFMA Performance Guarantee shall be invoked (as applicable).

38.5 No Challenge to Termination

- 38.5.1 Notwithstanding anything contained in the Agreement, the Developer agrees and acknowledges that any termination by Authority under this Article 38, shall be given effect to forthwith in accordance with the terms of this Article 38, and the Developer shall not be entitled to Dispute such termination (including, without limitation, with respect to the adequacy of the grounds of such termination, the effectiveness of the termination, provision (or lack thereof) of the relevant Cure Period, and/ or the rectification of the relevant Developer's Event of Default), and the Developer hereby waives all rights in respect thereof. Provided that the foregoing shall be without prejudice to the ability of the Developer to dispute the extent of Termination Payment and/ or Substitution Payment payable to the Developer consequent to any such termination.

38.6 Right of Authority to appoint other developer(s) post termination.

- 38.6.1 Notwithstanding anything contrary contained herein, and without prejudice to its other rights under the Agreement, the Authority shall, after the termination of the Agreement, have the absolute right to appoint any new

person to act as the developer of the Project / part thereof including during pendency of any dispute / arbitration proceedings post termination of the Agreement.



ARTICLE 39: VESTING OF ASSETS & PROJECT UTILITIES

39.1 Vesting upon Expiry of Term

- 39.1.1 In case of expiry of the Term, the process of transfer and vesting shall start at least 2 (two) years prior to expiry of the Term with a joint survey by Authority and the Developer of the Assets and Project Utilities (to the extent not already handed over by the Developer and vested with Authority (and/ or its nominee) in accordance with the Agreement), including all End Users occupying the Site/ the Commercial Development Assets including their Sub-Lease with the Developer.
- 39.1.2 In case Authority decides against offering the Commercial Development Assets on lease for a further term on mutually agreed terms and conditions, the Developer shall ensure that all the End Users vacate the Site at least a fortnight prior to the expiry of the Term so that the Project Land and Assets and Project Utilities (to the extent not already handed over by the Developer and vested with Authority (and/ or its nominee) in accordance with the Agreement) are transferred to Authority (and/ or its nominee) free from all Encumbrances, encroachments and easements. It is clarified that no compensation/residual value shall be payable by the Authority to the Developer in respect of Project Land and Assets and Project Utilities.
- 39.1.3 In case a new party is selected by Authority, to take over the obligations of the Developer, in respect of entire / any part of the Project, for a tenure as decided by the Authority, such party, after approval of the Authority, may (if applicable) decide to re-negotiate with any or all End Users for continuation of End Users beyond the Term.
- 39.1.4 In such a case the Developer may be informed by the new selected party prior to the expiry of the Term, about the continuation of such End Users who shall continue to occupy the Commercial Development Assets. The Developer shall allow such End Users to remain in occupation of the Commercial Development Assets while vacating the others before

transferring the Project Land, Assets and Project Utilities (to the extent not already handed over by the Developer and vested with Authority (and/ or its nominee) in accordance with the Agreement) to Authority (and/ or its nominee).

39.1.5 Provided that nothing contained in this Article 39.1 shall be deemed permit the Developer to enter into any Sub-Lease for time period that exceeds / goes beyond the Term.

39.2 Termination prior to expiry of Term

39.2.1 In case of termination of the Agreement prior to the expiry of the Term:

- (a) all the Assets and Project Utilities including works-in-progress, as existing on the Project Land together with the Project Land shall (to the extent not already handed over by the Developer and vested with Authority (and/ or its nominee) in accordance with the Agreement) be vested in Authority (or its nominee), free and clear of any Encumbrances or any encroachments;
- (b) all rights and obligations of the Developer in all agreements with third parties in respect of
 - (i) all Sub-Contracts in respect of the Project;
 - (ii) the Existing Contracts;
 - (iii) in all agreements with third parties in respect of Sub-Lease of Commercial Development Assets;

shall, unless otherwise determined by Authority stand attorned in favour of Authority;

39.3 Liabilities to be borne by Authority as a result of termination prior to expiry of Term

39.3.1 No liability (accrued or contingent) of the Developer in relation to any Sub-Contract for the Project on account of actions or inactions prior to the date of transfer of rights and obligations in terms of this Article 39 above shall be assumed or transferred to Authority or its nominee pursuant to vesting of the Project Land, Assets and Project Utilities with Authority. Authority at its own

discretion may continue with any Sub-Contracts or discharge them without any financial liability on Authority.

39.3.2 Further, Authority at its sole discretion may continue with the Sub-Lease deeds and Financing Agreements. Where, Authority decides to discontinue any Sub-Lease Deeds, and require the End-Users to vacate the relevant Commercial Development Assets, Project Utilities and the Site it shall refund the amount of Sub-Lease fees/ premium/ rentals paid for the un-availed period of Sub-Lease to the individual End Users after carrying out an independent audit of such liabilities through a professional chartered accountant/ auditor, appointed from the panel set forth in **Schedule 30** (*Panel of Chartered Accountants*) as under:

- (a) In the event of termination of Agreement before the issuance of the Completion Clearance for the Commercial Development Project, Authority may cancel the letter of allotments issued to End-Users by the Developer in respect of the Built Up Area in the Commercial Development Assets. Such End-Users shall be entitled to refund of all sums paid by them to the Developer specified in Article 27 as instalments (excluding any registration charges) after deduction of 10% (ten percent) from such sums towards processing fee.
- (b) In the event of termination of Agreement after the issuance of the Completion Clearance for the Commercial Development Project, Authority may terminate any or all Sub-Lease Deeds, letter of allotments and any such marketing agreements in respect of the Project executed by the Developer with any End-Users while such parties shall be entitled to refund of all monthly Sub-Lease rentals paid in advance for the un-availed period of the Sub-Lease.

Provided that any amounts paid by Authority to any such End-Users under this Article 39.3, shall be deducted from the Termination Payments made by Authority to the Developer under Article 38, and in the insufficiency thereof, otherwise reimbursed by the Developer.

39.4 Indemnity after Transfer

39.4.1 The Developer agrees and undertakes to indemnify and keep indemnified and harmless, the Indemnified Parties from and against all Liabilities, action proceedings, losses, damages, claims, costs and expenses etc., which may be sustained or suffered by any of the Indemnified Parties as a result of any actions or omissions of the Developer or any person claiming under or through it prior to the relevant transfer date.

39.5 Transfer Documentation

39.5.1 The Developer shall, and shall cause all Sub-Contractors and End-Users to duly execute and give effect to such documentation as may be required to give effect to the transfer of the Project Land, Assets and Project Utilities to Authority (and/ or its nominee), in accordance with the provisions of this Article 39.

39.6 Transfer Costs

39.6.1 Except as specified otherwise, all costs, expenses and all applicable taxes, duties, charges and levies (including applicable stamp duty and registration charges), as applicable, for the transfer of the Project Land, Assets and Project Utilities consequent to the expiry and termination of the Agreement shall be borne by the Developer. In the event of the failure of the Developer to duly pay the said amounts, Authority shall be entitled to pay the same, and deduct such amounts from the Termination Payments required to be made by Authority to the Developer under Article 38, and in the insufficiency thereof, otherwise require the Developer to reimburse the same as a debt due.

39.7 Vesting Certificate

39.7.1 Upon the due completion of the transfer requirements pursuant to the foregoing terms of this Article 39, and the Project Land, Assets and Project Utilities are duly handed over to Authority (and/ or its nominee), then the parties shall duly execute a 'Vesting Certificate', in the form set forth in **Schedule 35** (*Vesting Certificate*), recording such due completion.

CHAPTER VI: OTHER PROVISIONS



ARTICLE 40: CHANGE OF OWNERSHIP AND EQUITY LOCK-IN

- 40.1 The Developer agrees and acknowledges that the Selected Bidder has incorporated the Developer as a special purpose vehicle, incorporated as a company under the Companies Act, 2013, for the purposes of the Project, and the Developer shall for the duration of the Term of the Agreement, not undertake any business or operations, either directly or indirectly, other than the implementation of the Project and undertaking any Station Facility Management granted to the Developer in accordance with Article 25 hereof and Station Facility Management Agreement.
- 40.2 The Developer shall not be permitted to undertake or permit any change in its ownership / shareholding pattern except as provided herein.
- 40.3 Notwithstanding anything to the contrary contained in the Agreement, the Developer agrees and acknowledges that:
- 40.3.1 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 Developer; and/or
- 40.3.2 acquisition of any control directly or indirectly of the Board of Directors of the Developer by any person either by himself or together with any person or persons acting in concert with him,

shall each be subject to prior approval of Authority on the Developer giving prior information to Authority of any such proposed change in its shareholding together with excerpts of relevant Applicable Laws that permit the Developer to do so and in case of failure to do so, Authority shall have the right to terminate the Agreement, forfeit the Lease Premium amount already paid, forfeit the Security Deposit by encashing the bank guarantee, encash the Performance Guarantee for Project, the Performance Guarantee for Mandatory Project and SFMA Performance Guarantee and take such other steps as may be available to Authority without in any manner being liable to the Developer. Further, in the event of a

change in control of an Associate whose technical experience was taken into consideration for the purposes of Technical Capacity at the time of submission of the Bid and in case such change in ownership results in the Selected Bidder becoming technically ineligible, Authority shall be entitled to terminate the Agreement and forfeit the amounts and encash the Performance Guarantees as specified above.

For the purposes of this sub- Article:

- (a) the expression “acquirer”, “control” and “person acting in concert” shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity, or the control of the Board of Directors, as the case may be, of the Developer;
- (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 Developer; and
- (c) power to appoint, whether by Agreement or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situated in India or abroad) the Equity of the Developer, not less than half of the directors on the Board of Directors of the Developer or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Developer shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Developer.

40.4 The Selected Bidder shall hold the entire 100% (99.9% in case the Selected Bidder is individual and single Entity) of the paid-up and subscribed equity share capital of the Developer at all times till meeting of all the Conditions Precedent of the Developer. Further the Selected Bidder shall, and the Developer shall ensure that the Selected

Bidder shall, hold (a) not less than 51% (fifty one percent) in the paid-up and subscribed equity share capital of the Developer until the 2nd (second) anniversary of the date of Commercial Operation of the Project or until the payment of full amount of Lease Premium and any other overdue payment till date payable to Authority including interest thereof, whichever is later; and (b) thereafter not less than 26% (twenty six percent) of the subscribed and paid up equity of the Developer at all times till end of the Term of SFMA including any renewals thereof. Additionally in the event the Selected Bidder is a Consortium, each Member of the Consortium whose experience has been considered to fulfill the Technical Capacity and / or Financial Capacity and Lead Member shall individually hold a minimum of 26% (twenty six percent) equity/ownership in the Developer until the 2nd (second) anniversary of the date of Commercial Operation of the Project or until the payment of full amount of Lease Premium and any other overdue payment till date payable to Authority including interest thereof, whichever is later.

- 40.5 Where, having due regard to the specific circumstances, Authority has reasonable belief that it would be in the best interests of the Project so to do, then Authority may, its sole discretion and on the specific request of the Developer permit a Member (other than the Lead Member of the Consortium) who has contributed towards Financial Capacity and/or Technical Capacity to divest its equity/ownership in the Developer prior to the Equity lock-in period specified above. Provided however, that any such permission shall be only granted where (a) the remaining Members of the Consortium constituting the Selected Bidder continue to hold minimum 51% (fifty one percent) of the Equity shareholding in the Developer and (b) the new member has Financial Capacity or Technical Capacity, as the case may be, equal to or better than that of the Member being replaced as on the date of replacement, and duly fulfils the original eligibility criteria specified for the selection of the Selected Bidder in the Bid Documents (which had been satisfied through the means of such Member as is proposed to be so replaced). Further, part divestment of equity of a Member shall not be permitted. It is clarified that the change in technical or financial Member shall be considered as divestment of equity and if such change leads to divestment of equity more than the limit specified above, then such change shall not be permitted.

ARTICLE 41 : DISPUTE RESOLUTION

- 41.1 The Parties agree to use their best efforts for resolving the Dispute promptly, equitably and in good faith and further shall provide each other with reasonable access during normal business hours to all non-privilege records, information and data pertaining to the Dispute.
- 41.2 Subject to Article 38.5, any Dispute shall in the first instance be resolved by the Parties through mutual discussions and settlement. In the event that such Dispute is not resolved by amicable resolution within a period of 90 (ninety) days from the raising of the Dispute, then the Party shall subject themselves.
- 41.3 **Conciliation:-** In the event of any Dispute between the Parties that is not settled mutually in terms of Article 41.2 above, either Party may call upon the General Manager of Zonal Railway of the Station and upon such reference the Dispute shall be referred to the Conciliation Committee. The Conciliation Committee shall be fully empowered to deal with all aspects of such reference including withdrawal, compromise or settlement of such Dispute or any part thereof. Upon such reference, the representatives of the Developer and members of Conciliation Committee shall meet no later than 10 (ten) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 10 (ten) 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 60 (sixty) days of the reference to the Conciliation Committee in writing or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration by sending a written notice to the other Party at the following addresses

To the Authority:

Kind Attention: General Manager of Zonal Railway of the Station

Address, facsimile transmission or email: As specified in the SCDA.

To the Developer:

Kind Attention: Developer

Address, facsimile transmission or email: As specified in the SCDA.

41.4 Such arbitration shall be conducted under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”), through an arbitral tribunal consisting of three arbitrators. The seat and venue of the arbitration proceedings, shall unless specified under the SCDA, be at New Delhi, India.

41.5 Each Party shall be entitled to nominate and appoint one arbitrator, and the two arbitrators so appointed, shall appoint the third arbitrator.

Provided that where:

41.5.1 a Party fails to nominate and appoint an arbitrator, within 30 (thirty) days of the reference of the dispute to arbitration, such arbitrator; and/ or

41.5.2 the two arbitrators appointed by the Parties (or otherwise appointed under the Arbitration Act), fail to appoint the third arbitrator within 30 (thirty) days;

the said arbitrator shall be appointed in accordance with the Arbitration Act.

41.6 Without prejudice to the generality of the foregoing provisions of this Article 41.6, the Arbitral Tribunal shall have power to call for such evidence by way of affidavits or otherwise as the Arbitral Tribunal shall think proper and it shall be the duty of the Parties hereto to do or cause to be done all such things as may be necessary to enable the Arbitral Tribunal to make the award without any delay. The Arbitral Tribunal shall record day to-day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements.

41.7 The award of the Arbitral Tribunal shall be in writing, and be a reasoned award. Such award shall provide claim wise, the sum and reasons upon which it is based. The analysis and reasons set forth in such award shall be detailed enough so that the award and the basis thereof are capable of being inferred therefrom.

41.8 A Party may apply for corrections of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award and

interpretation of a specific point of award to Arbitral Tribunal within 60 (sixty) days of receipt of the award.

41.9 A Party may apply to the Arbitral Tribunal within 60 (sixty) days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

41.10 In case of the Arbitral Tribunal, comprising of three members, any ruling or award shall (in the absence of unanimous consent) be made by a majority of members of Arbitral Tribunal.

41.11 Obligation During Pendency of Arbitration

The execution of the Project under the Agreement shall, unless otherwise directed by the Nodal Officer, continue unhindered during the arbitration proceedings, and no payment due or payable by the Developer shall be withheld on account of such proceedings, provided, however, it shall be open for Arbitral Tribunal to consider and decide whether or not the Project shall continue or such payment be withheld during arbitration proceedings.

41.12 **Excepted Matters:-** All disputes in connection with the Agreement shall be referred by either Party to the General Manager of the Zonal Railway of Station provided that matters for which provisions have been made in Article 4.5, Article 4.6, Article 4.8, Article 5.5, Article 12.2.1, Article 30, Article 36.2.1 (c), Article 37, Article 38.1, Article 38.2, Article 38.3.5, Article 39, Article 43 and Article 44 shall be deemed as Excepted Matters and the decision of Authority thereon shall be final and binding on the Developer, provided further that 'Excepted Matters' shall stand specifically excluded from the purview of the arbitration clause.

41.13 Notwithstanding anything contained in the Agreement, Article 41.4 shall not be applicable for settlement of claims or disputes notified by the Developer if the Net Present Value of all such claims by the Developer including previous claims or awards of Arbitral Tribunal, determined at the compounded annual interest rate of 15% (fifteen percent), is more than 20% (twenty percent) of the present value (determined at the compounded annual interest 15% (fifteen percent)) of aggregate of (a) all payments received by Authority from Developer towards Consideration till the date of receipts of the claim/dispute; (b) the Estimated Project Cost of such part

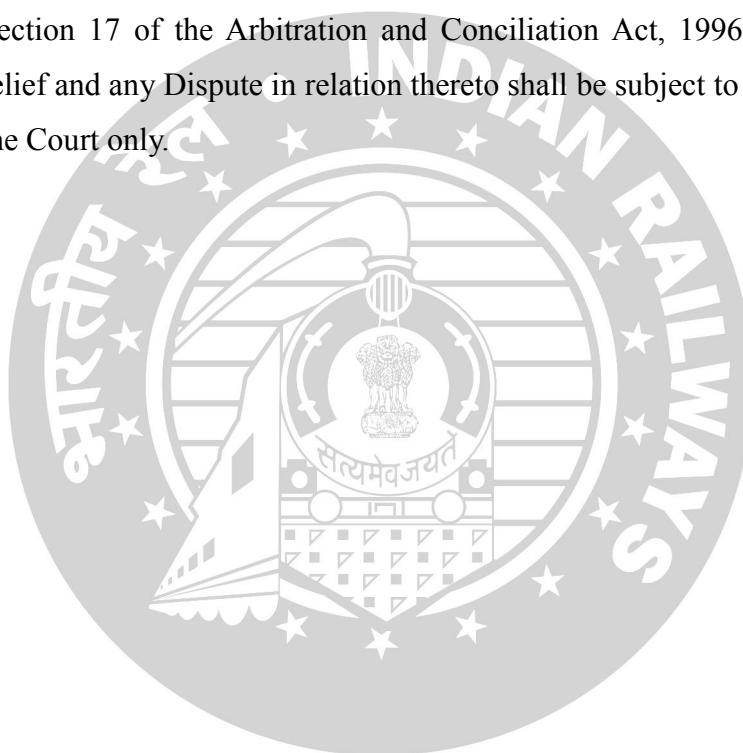
of the Mandatory Project and Commercial Development Project in respect of which completion claims has been issued and, in respect of other parts of the Mandatory Project & Commercial Development Project, the relevant percentage of the Estimated Project Cost thereof, as determined on the basis of the compounding estimated percentage completion indicated against the last Key Date achieved and certified of part of the relevant works and (c) reduced by any Distributions withdrawn by the Developer till the date of termination.



ARTICLE 42: GOVERNING LAW AND JURISDICTION

42.1 Governing Law & Jurisdiction

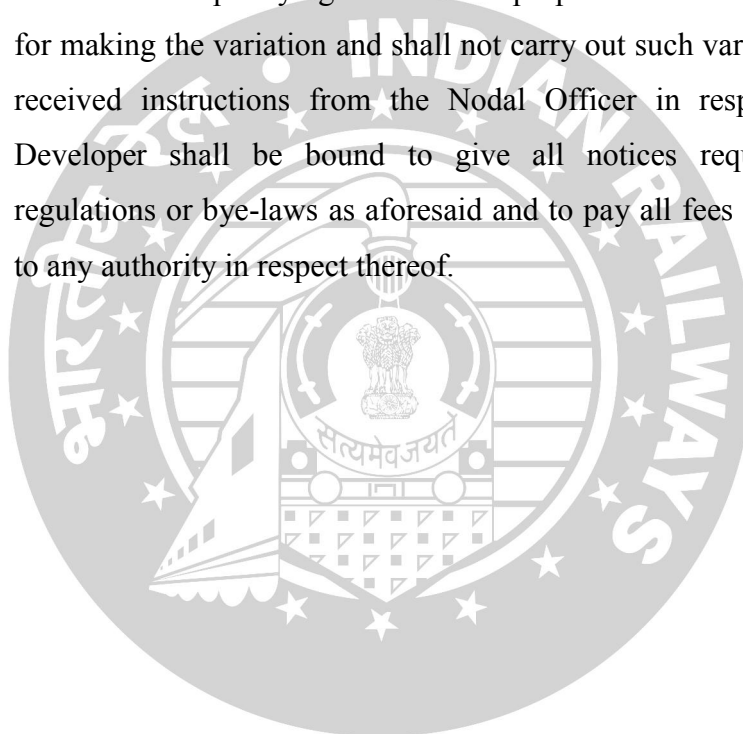
42.1.1 The Agreement shall be governed by and construed in accordance with the laws of India and subject to Article 41 hereof, and Article 38.5, the Court alone shall have exclusive jurisdiction on matters pertaining to or arising from the Agreement. Provided that, where the Parties, in respect of any arbitration proceedings commenced (or proposed to be commenced) hereunder, seek any interim relief under the provisions of Section 9 or Section 17 of the Arbitration and Conciliation Act, 1996, all such interim relief and any Dispute in relation thereto shall be subject to the jurisdiction of the Court only.



ARTICLE 43: COMPLIANCE TO REGULATIONS AND BYE-LAWS

43.1 Developer's Obligation

43.1.1. The Developer and the Sub-Contractor appointed or hired by the Developer shall at all times during the Term of the Agreement conform to the provision of all Applicable Laws relating to the Project and regulations and bye- laws of any local authority and of any water and lighting companies or undertakings, with whose system the work is proposed to be connected and shall before making any variation from the Drawings or the specifications that may be necessitated by so confirming, give to the Nodal Officer notice specifying the variation proposed to be made and the reason for making the variation and shall not carry out such variation until he has received instructions from the Nodal Officer in respect thereof. The Developer shall be bound to give all notices required by statute, regulations or bye-laws as aforesaid and to pay all fees and taxes payable to any authority in respect thereof.



ARTICLE 44: ILLEGAL GRATIFICATION

44.1 Consequence of Bribe and Unfair Advantage

44.1.1 Any bribe, commission, gift or advantage given, promised or offered by or on behalf of the Developer or his partner, agent or servant or, anyone on his behalf, to any officer or employee of Authority and/or PMC, or to any person on his behalf in relation to obtaining or execution of this or any other contract with Authority shall, in addition to any criminal liability which it may incur, subject the Developer to the rescission of the Agreement.

44.2 No Monetary Transaction with Employees

44.2.1 The Developer shall not lend or borrow from or have or enter into any monetary dealings or transactions either directly or indirectly with any employee of Authority and / or PMC and/or Railways and if he shall do so, Authority shall be entitled forthwith to rescind the Agreement. Any question or dispute as to the commission or any such offence under this Article shall be settled by the General Manager of the Zonal Railway of Station, in such a manner as he shall consider fit and sufficient and his decision shall be final and conclusive. In the event of rescission of the Agreement under this Article, the Developer will not be paid any compensation.

ARTICLE 45: LIABILITY & INDEMNIFICATION

45.1 Liability in respect of the Project

45.1.1 The Developer shall be solely responsible for the construction, operation and management of the Project in accordance with the terms of the Agreement and shall have the overall responsibility and liability with respect to the Project and all Assets and Project Utilities located upon the Project Land. In no event shall Authority have any liability or be subject to any claim (notwithstanding any approval or acceptance thereof, by Authority, PMC, Nodal Officer, or on account of any provision in the Specifications) for any damages (including to person and property of third parties) arising out of (a) the design, engineering, Detailed Design and Drawings, Drawings, development, financing, construction, the Project and the Assets and Project Utilities located upon the Project Land and (b) the operation and maintenance of the Assets, Project Utilities (to the extent required to be undertaken pursuant to the Agreement), and any and all liability arising to Authority on account of the same, shall be to the account of the Developer.

45.2 Deemed Knowledge and Disclaimer

45.2.1 The Developer shall be fully and exclusively responsible for, and shall bear the financial, technical, commercial, legal and other risks in relation to the Project regardless of whatever risks, contingencies, circumstances and/or hazards may be encountered (foreseen or not foreseen) including underground utilities and notwithstanding any change(s) in any of such risks, contingencies, circumstances and/or hazards on exceptional grounds or otherwise and whether foreseen or not foreseen and the Developer shall not have any right whether express or implied to bring any claim against, or to recover any compensation or other amount from Authority in respect of the Project other than for those matters in respect of which express provision is made herein.

45.3 Indemnity

45.3.1 The Developer hereby indemnifies and agrees and undertakes that from the Effective Date and thereafter during the Term and even after expiry of the Term, it shall keep indemnified and otherwise saved and harmless the Indemnified Parties from and against any and all Liabilities, claims, demands made against and/or loss caused and/or the damages suffered and/or cost, charges/expenses incurred or put to and/or penalty levied and/or any claim due to injury or death of any person and/or loss or damage caused or suffered to any property owned or belonging to Authority and /or Railways, their agents and employees or third party as a result of any acts, deeds or thing done or omitted to be done by Developer (or any personnel, agent, representative, or Sub-Contractors thereof) or as a result of failure on the part of Developer to perform any of its obligations under the Agreement, or on the Developer committing breach of any of the terms and conditions of the Agreement or on the failure of the Developer to perform any of its statutory duty and/or obligations or failure or negligence on the part of Developer to comply with any Applicable Laws or Applicable Permits or as a consequence of any notice, show cause notice, action, suit or proceedings, given, initiated, filed or commenced by any third party (including End Users or Government Authority) or as a result of any failure or negligence or default of the Developer or the Sub-Contractors and/or their invitees as the case may be, in connection with or arising out of the Agreement or arising out of or in connection with Developer's use and occupation of the Site and Commercial Development Assets located thereon or due to the non performance by the Developer of any of its obligations under the Sub-Lease Deed with End Users.

45.3.2 Notwithstanding anything to the contrary contained herein, in no event shall any of the Indemnified Parties be liable to indemnify the Developer for any matter arising out of or in connection with the Agreement in respect of any indirect or consequential loss, including loss of profit, suffered by the Developer.

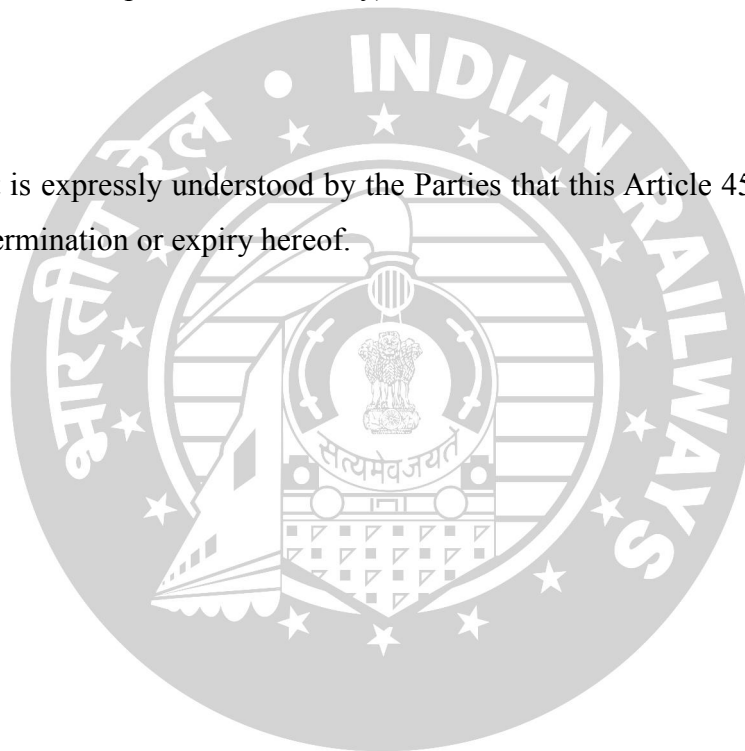
45.3.3 The indemnity provisions herein and under the Agreement shall survive expiry or earlier termination of the Agreement.

45.4 Authority's Limitation of Liability

45.4.1 The Parties agree and acknowledge that the aggregate liability of Authority under the Agreement, including in respect of any breach or default of the Agreement (over and above any Termination Payment due and payable under the Agreement), shall not exceed the aggregate Consideration received from the Developer (excluding all applicable Taxes, and any reimbursements of cost and expenses of Authority).

45.5 Survival

45.5.1 It is expressly understood by the Parties that this Article 45 shall survive the termination or expiry hereof.



ARTICLE 46: COMMUNICATIONS & SERVICE OF NOTICES

- 46.1 All notices, communications, reference and complaints made by Authority or the Nodal Officer or the Developer or their representatives (including the Authorised Representatives) shall be in writing.
- 46.2 The Developer shall furnish to the Nodal Officer the name, designation and address of his authorised agent whom all complaints, notices, communications and references shall be delivered.
- 46.3 All notices, communications, reference and complaints shall be sent through Registered Post, Speed Post or shall be delivered personally in hand and shall be deemed to have been (unless there is evidence that it has been received earlier) received within 3 (Three) business days of the same being sent through Registered Post, Speed Post or on the same day if delivered personally in hand during the normal business hours of the Party to whom such notice or communication is being delivered. In addition, the notice shall also be sent by facsimile and email.
- 46.4 All notices, requests, demands or other communication required or permitted to be given under the Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the address communicated by the Parties to each Party.

ARTICLE 47 : AUDIT & ACCOUNTS

- 47.1 The Developer agrees and undertakes that during the subsistence of the Agreement, it shall maintain books of accounts in respect of the Project recording all receipts including those on account of Project Revenue, income receipt, payments, assets and liabilities in accordance with Good Industry Practice and Applicable Laws. The said account shall, inter-alia, clearly reflect:
- 47.1.1 End User wise account of receipts and other Receivables;
 - 47.1.2 Account of all other receipts and receivables;
 - 47.1.3 Obligations towards contractors, Sub-Contractors, suppliers and all payments made;
 - 47.1.4 Application of debt funds; and
 - 47.1.5 Application of equity funds.
- 47.2 Authority shall have the right to inspect the records of the Developer during office hours and require copies of relevant extracts of books of account, duly certified by auditors of the Developer, which the Developer shall be bound to provide to Authority.
- 47.3 The Developer also agrees and undertakes that it shall within 30 (thirty) days of the close of each quarter of a Financial Year/Accounting Year, furnish to 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 companies listed on a stock exchange.
- 47.4 It is expressly agreed between the Parties hereto that for the purposes of this Article, Authority and/or Railway may appoint an independent auditor, the cost whereof during the Construction Period shall be borne by the Developer and thereafter, the same shall be borne by Authority and/or Railways , as applicable.

ARTICLE 48: TRANSFER OF JURISDICTION

48.1 Transfer of Jurisdiction

48.1.1 If for administrative or any other reasons the Agreement is transferred to any other Railway agency or department, the Agreement shall, notwithstanding any things contained herein contrary there to, be binding on the Developer and authority or such other Railway or project authority as the case may be, in the same manner and take effect in all respects as if the Developer and Authority or such other Railway or project authority had been parties thereto from the date of the Agreement.



ARTICLE 49: MISCELLANEOUS

49.1 Agreement to Override Other Agreements

49.1.1 The Agreement supersedes all previous agreements or arrangements between the Parties, including any memoranda of understanding entered into in respect of the contents hereof and represents the entire understanding between the Parties in relation thereto.

49.2 No Waiver; Remedies

49.2.1 No failure on the part of any Party to exercise and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other of further exercise thereof or the exercise of any other right, power or privilege. Further, no such waiver of any provision of the Agreement, nor consent to any departure by any of the Parties there from, shall in any event be effective unless the same shall be in writing and signed by the Parties hereto and then such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

49.3 Severance of Terms

49.3.1 If for any reasons whatsoever, any provisions of the Agreement are declared to be void, invalid, unenforceable or illegal by any competent arbitral tribunal or court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of the Agreement, which shall continue in full force and effect and in such event, the Parties shall endeavour in good faith to forthwith agree upon a legally enforceable substitute provision as will most closely correspond to the legal and economic contents of the unenforceable provision.

49.4 Language

49.4.1 All notices, certificates, correspondence or other communications under or in connection with the Agreement, any other Project documents or the Project shall be in English.

49.5 Counterparts

49.5.1 The Agreement is made in 2 (two) original copies, each having the same contents and the Parties have read and thoroughly understand the contents hereof and have hereby affixed their respective signatures and seals before witnesses. All counterparts shall constitute one and the same Agreement. The original Agreement shall remain in the custody of the Authority till such time it is presented for registration by the Developer at the relevant sub-Registrar's office. The original duly registered Agreement will be retained by the Authority and handed over to the Developer once the Developer provides to the Authority a certified true copy of the duly registered Agreement.

49.6 Assignment

49.6.1 Save and except otherwise permitted by the Agreement, Developer shall not assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities under the Agreement.

49.6.2 Authority shall have the unilateral right to assign, transfer, mortgage, charge, sub-let, deal with, sub-contract, or otherwise grant rights in or over all or any of the rights, or all or any of its obligations or liabilities (including those relating to arbitration) under the Agreement to any entity.

49.7 Costs and Expenses

49.7.1 Each Party shall bear its own costs (and expenses, including without limitation any fees payable to its advisors) in connection with the negotiation, preparation and execution of the Agreement. Provided that all the taxes including the stamp duty and registration charges with respect to the (a) Agreement and/or cancellation / termination of the Agreement, (b) lease deed(s) and/or sub-lease deed(s) to be executed in favour of the Developer / its nominee, (c) surrender and/or cancellation of such lease deed(s) and/or sub-lease deed(s) etc., shall be borne by the Developer. The Parties expressly agree that it shall be the responsibility of the Developer to comply with the requirements in relation to the registration of the Agreement with any relevant Government Authority.

49.8 No Agency

49.8.1 The Parties agree that nothing in the Agreement shall be in any manner, interpreted to constitute an agency or partnership for and on behalf of any other Party and the relationship between the Parties is as a principal to principal and on an arm's length basis. Except as otherwise expressly agreed to, nothing contained herein shall confer, on any Party, Authority to incur any obligation or liability on behalf of the other Party or bind the other.

49.9 Third Party Benefit

49.9.1 Nothing herein expressed or implied is intended, nor shall it be construed to confer upon or give to any third party any right, remedy or claim under or by reason of the Agreement or any part hereof.

49.10 Exclusion of Implied Warranties etc.

49.10.1 The Agreement expressly excludes any warranty, representation, 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 any Party not contained in a binding legal agreement executed by the Parties.

49.11 Joint and Several Liability

49.11.1 The Selected Bidder and the Developer shall be jointly and severally liable for the performance under the Agreement till the Expiry Date.

49.12 Amendment & Waiver

49.12.1 In the event of any of the provisions of the Agreement requiring to be modified after the Agreement have been signed, all amendments, modifications and variations shall be made in writing and signed by Authority and the Developer. Any verbal or written arrangement abandoning, modifying, extending, reducing or supplementing the Agreement or any of the terms thereof shall be deemed invalid and shall not be binding on Authority unless and until the same is incorporated in a formal instrument and signed by Authority and the Developer.



SCHEDULES

SCHEDULE 1

PROJECT LAND / DETAILS¹⁰

(Under Article 1.1.111)

Schedule 1A Station Development Land

1. Location Map and site plan of the proposed Station [*Insert Name of the Station*] and allied areas i.e. Station Development Land (refer drawing No. _____);
2. Proposed Land & reference drawing No. _____ for :
 - a. Station building development _____ sq m;
 - b. Platform area _____ sq m;
 - c. Circulating areas _____ sq m;
 - d. Parking _____ sq m;
 - e. Allied area including utility and service area _____ sq m;

Schedule 1B Redevelopment Land

1. Location Map and site plan of the proposed Redevelopment Land (refer drawing No. _____);
2. Proposed land & reference drawing No. _____ for :
 - a. Quarters _____ sq m;
 - b. Service and utility buildings _____ sq m;
 - c. Other areas _____ sq m;
 - d. Number of quarters, type and carpet area

Schedule 1C Site Land

1. Location Map and site plan of the proposed Reserved Railway Land and airspace at Station Land and / or Redevelopment Land, if any (refer drawing No. _____);
2. Proposed area & reference drawing No. _____ for Commercial Development:
 - a. Reserved Railway Land _____ sq m;

¹⁰ To be filled from PIM and DPR.

b. Above Station Development for airspace plan area _____ sq m;

Schedule 1D

Intentionally kept blank

Schedule 1E Structures, Utilities, Encroachments and Encumbrances

1. Existing Trees

Details of the existing trees are marked on the plan no.....

<i>S. No.</i>	<i>Species of Tree</i>	<i>Girth size 1 meter above ground level</i>	<i>Nos.</i>
1			
2			
3			

2. Details of the religious structure marked on the plan no.....

<i>S. No.</i>	<i>Description</i>	<i>Type of Structure</i>	<i>Approximate area (m²)</i>	<i>Remarks</i>
1	Temple	Temporary or permanent		Can be shifted or not shifted
2				
3				

Note – However the Developer will have liberty to shift the religious structures, at his own cost and efforts. Railway will not make available any land for relocating these religious structures.

3. List of Utilities are marked on the Plan No.....

<i>S. No.</i>	<i>Description</i>	<i>Type of Structure</i>	<i>Remarks</i>
1	Over Head water Tank		Whether to be relocated or retained

2	Microwave Tower		
3	Electrical Towers		
4	Police Control Room Towers		

Note: Schedule to set out all existing structures, utilities, encroachments and encumbrances at the Site Land and the Station Development Land, to the extent that these are inventoried prior to the execution of the Development Agreement.

Schedule 1F Summary Table

S. No.	Description	Zone Marked on the Plan	Approximate area (m²)
a	Station Development	Zone []	
b	Redevelopment Project		
c	Commercial development		
d	Restricted area		
e	Encroachment area		
f	Encumbrance area		
g	Site for establishment of Temporary Office, storage, Bar bending yard, batching Plant, Developers' Labour Camp etc.		

Schedule 1G Master Plan

Note: Copy of Master Plan with relevant markings to be enclosed, identifying the Station Development Land, the Redevelopment Land, the Site and the items enumerated in Schedule 1A to 1F.

SCHEDULE 2

SCOPE OF PROJECT¹¹

(Under Article 2)

Schedule 2A Scope of Station Development Project

The Station Development Project shall comprise of the development of:

- a. Station Building to be constructed on _____ sq m, as earmarked on the Master and shall have a Built Up Area of at least _____ sq m (refer drawing No. _____) ;
- b. Strengthening/ upgrading including resurfacing of _____ number of side platforms, _____ number of island platforms, having a cumulative floor area of _____ sq m, and roof area of _____ sq m (refer drawing No. _____);
- c. Project facilities as specified in **Schedule 8** (*Project Facilities*);
- d. Parcel handling facilities of _____ sq m, and roof area of _____ sq m, as specified under **Schedule 2E** (*Scope of Parcel Handling Facilities*);
- e. Parking areas as specified under **Schedule 2D** (*Scope of Station Parking*);
- f. The Station Development Project shall be undertaken in conformity with the requirements of **Schedule 9** (*Standards and Specifications*) and as otherwise prescribed under the Agreement and the other Schedules;
- g. Landscaping – For soft and hardscape refer drawing No. _____ placed at **Schedule 11** as approved by the Authority.
- h. Project Utilities as per **Schedule 10**.
- i.

Schedule 2B Scope of Redevelopment Project

The Redevelopment Project shall comprise of the development of:

¹¹ To be filled from PIM and DPR.

- a. _____ number of quarters having a cumulative Built Up Area of _____ sq m;
- b. Service and utility buildings, having a cumulative Built Up Area of _____ sq m;
- c. Other railway facilities, having cumulative Built Up Area of _____ sq m (if any);
- d. The Redevelopment Project shall be undertaken in conformity with the requirements of **Schedule 9** (*Standards and Specifications*) and as otherwise prescribed under the Agreement and the other Schedules;
- e.

Schedule 2C Scope of Commercial Development Project

The Commercial Development Project shall comprise of the development of a maximum of:

- a. Built Up Area of _____ on Reserved Railway Land (refer drawing No. _____);
- b. Built Up Area of _____ in airspace above the Station Development (refer drawing No. _____);

Schedule 2D Scope of Station Parking

The Developer shall as a part of the Station Development Project, develop:

- c. Car parking: _____ numbers;
 - 39.3.1 Surface parking: _____ numbers;
 - 39.3.2 Elevated/ Multi level parking: _____ numbers;
 - 39.3.3 Underground parking: _____ numbers;
 - 39.3.4 VIP parking : _____ numbers (as a part of the parking under (i), (ii), (iii) above);
- d. Two wheeler parking: _____ numbers;
 - 39.3.5 Surface parking: _____ numbers;
 - 39.3.6 Elevated/ Multi level parking: _____ numbers;

- 39.3.7 Underground parking: _____ numbers;
- e. Bicycle parking: _____ numbers;
- f. Rickshaw/ Tonga parking : _____ numbers;
- g. Taxi parking: _____ numbers;
- h. Bus parking: _____ numbers;

Schedule 2E Scope of Parcel Handling Facilities

[Note: Scope of the proposed parcel handling facilities, including applicable area, and details of design and equipment requirements to be enumerated hereunder]



SCHEDULE 3

SCHEDULE OF PAYMENTS

(Under Article 30)

[Note : The Payment Schedule of Bid Document (refer Bid Form XI of Bid Document) to be reproduced here]



SCHEDULE 4

¹²PROJECT SCHEDULE¹³

(Under Article 12.1)

PROJECT SCHEDULE

(Note: The Project Schedule is to be in consonance with the DPR)

1. Project schedule for Mandatory Project (Station Development and Redevelopment Project).

Key Dates	Description of Activity	Time (Days are from the Appointed Date) (3)	Liquidated Damages (% of per week)	Maximum Extent of Liquidated Damages	Remarks
(1)	(2)	(3)	(4)	(5)	(7)
KD1	Preliminary Design Submission for Mandatory Project				
KD2	Submission of Handover Plan – Station Development Land and Handover Plan - Redevelopment Project				

¹² To be filled by Authority.

¹³ This Schedule should be tailored for each document depending on the terms under such transaction.

KD2	Definitive design submission for Mandatory Project				
....	Completion of foundation works, including basement of Station Development Project				
	Completion of the concourse				
	Completion of platform / surfacing/ roof of platform				
	Completion of all relocation works comprised in the Redevelopment Project				
	Completion of circulating areas and other development works in relation to the Station				

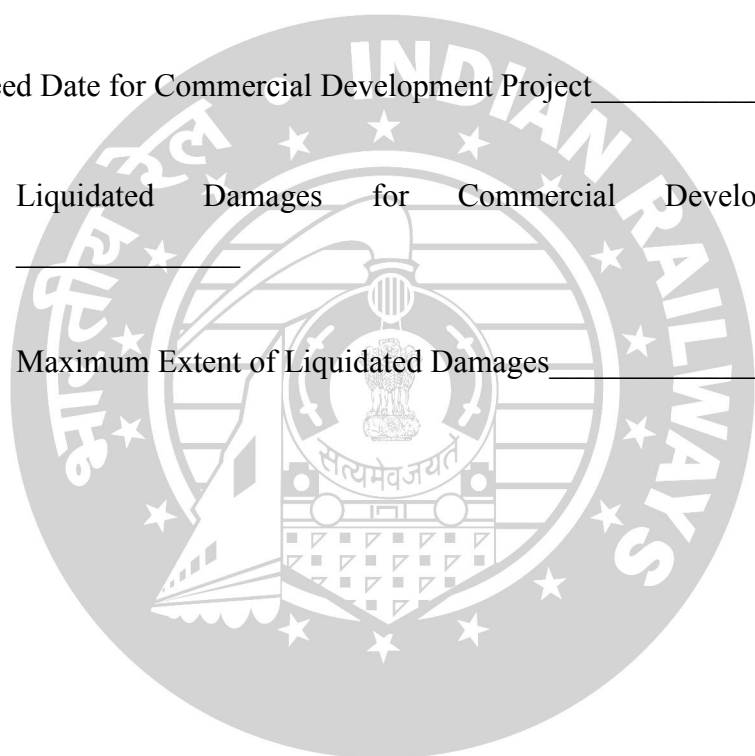
	Development Project				
	Completion of all other aspects of the Mandatory Project				

The overall extent of the Liquidated Damages for the Mandatory Project shall not exceed [10% (ten percent) of the Estimated Cost of Mandatory Project]

2. Guaranteed Date for Commercial Development Project _____

(a) Liquidated Damages for Commercial Development Project

(b) Maximum Extent of Liquidated Damages _____



SCHEDULE 5¹⁴

STATION FUNCTIONAL REQUIREMENTS¹⁵

(Under Article 2.1)

The Developer shall ensure that the Station Development Project shall adhere to and comply with the below set requirements:

1. Design of adequately sized and efficient functional Passenger/ Public areas based on the projected passenger growth.
2. Segregation of arriving and departing passengers.
3. Organised Passenger Flow between various passenger-related areas (Ticketing, concourse, waiting areas etc.) as well as areas of intermodal exchange.
4. Coherent space design with well-defined zones for circulation and seating areas.
5. Formulation of a fool-proof security scheme and surveillance plan.
6. Design and location of effective Information screens; way finding signage etc.
7. Integration of various facilities in the station whilst considering short-term construction constraints and long-term planning, city development and traffic organization. The long-term nature of the station phasing allows for flexible spaces and innovative construction methods to be adapted in order to satisfy future objectives.
8. Station shall be able to provide patronage to the following:

<i>Scenario</i>	<i>Passenger per day</i>	<i>Peak station population/hr</i>
Existing (non-peak hours)		
Existing (Peak Season)		
Future (non-peak hours)		
Future (Peak Season)		

¹⁴ To be filled from DPR.

¹⁵ Note: This Schedule should set out all the design, construction and operational requirements that the project would be required to cater to, and based on which the Developer shall be required to prepare the detailed design & drawings. The aforesaid list is indicative and for guidance purposes. The actual scope should be prepared for each Station depending on the specific requirements of such Station

Station shall be able to handle people/day during peak season with slightly reduced level of service.

9. Detailed Design & Drawings for the Station Development Project shall be developed based on the following:

- (i) The station shall be developed for physically, socially, economically and ecologically in terms of comfort, security and safety for passengers, staff, visitors and the general public.
- (ii) Lift per platform Nos.
- (iii) Escalators & stairs per platformNos.
- (iv) Movement through the station can be summarised as follows:

The travel path for the departing passengers is described in the flow diagram as:
Security + Ticket Check -> Departure Hal -> Ticket Check -> Concourse and Waiting Hall -> Platform

Ground Floor	First Floor	First & Second Floor
---------------------	--------------------	---------------------------------

The travel path for the arriving passengers is described in the flow diagram as:
Platform -> Ticket Check -> Arriving Hall -> Public/Private Transport

Basement Floor	First Floor
-----------------------	--------------------

- (v) Movement through station can be summarised as follows:

Platform -> paid circulation -> arrival concourse -> Arriving Hall -> Public/Private Platform

Basement Floor	First Floor
-----------------------	--------------------

- (vi) Approx _____ sqm per application of photovoltaic cells to generate electricity.
- (vii) A Fire Engineering approach has been assumed for the design of the station as statutory guidelines are in adequate for the type of facility envisaged.

10. Architectural Expression

- (i) Architectural Drawings Nos. _____, enclosed shall be developed into working drawings and submitted for approval.
- (ii) Circulation – Pattern of circulation i.e. segregating of departing and arriving long haul passengers, segregation of long haul of commuter passengers.
- (iii) Entrances:
- (iv) Basic station lay out is at _____.
- (v) Basement details to be enclosed _____.
- (vi) Modularity :
- Diagonal grid pattern
 - Structural
 - Environmental – natural lighting
 - Shape of column
 - Shading
 - The roof concept
 - Curtain wall
 - Concourse floors
 - Concourse walls
 - Concourse ceiling
 - Platform flooring – Vertical surfaces at platform areas
 - Platform Ceiling
 - Platform Equipment
 - Roof soffit
 - Roof

11. Landscaping

- Street furniture
- Seating

- Ballard
- Water body/fountain

12. Signage & Graphics

- All entrances to the station & roads leading to the same
- Location of booking & reservation counters
- Way to all platforms
- All facilities such as international tariff bureau, waiting rooms, retiring rooms, refreshment rooms, May I help you counters and offices of importance – Station officials
- Food stalls & book stalls
- Locations where various coaches in a train will come to halt on platform
- Train composition chart
- Handicap facilities
- On the FOB indication of train & platform with train information diagram

13. Art

14. Advertising (as per the guidelines of MOR issued from time to time)

15. Finishes

16. Temporary diversions

Construction of temporary buildings for phased work

17. Furniture, Fixtures & Equipment –

- Fire fighting equipment
- Emergency alarms
- Emergency plungers
- Emergency telephones
- First aid equipment
- Water points

- Utilities cabinets
- Telephone
- Seating
- Public address equipment
- Signage
- Clocks
- Waste bins
- Railings
- LCX for commercial / mobile phone / pager reception
- LCX for station operators
- CCTV's
- Passenger Information Displays
- Vending Machines
- Train Maintenance closet
- Rain water harvesting
- Lighting

[Note: Detailed design criteria for the development of station shall be enclosed in this schedule.]

SCHEDULE 6¹⁶

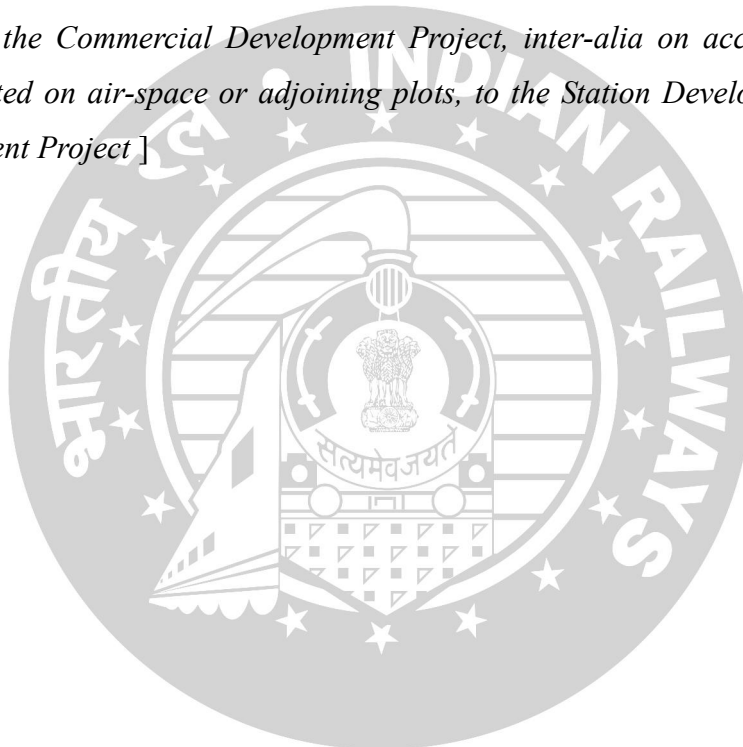
MAINTENANCE REQUIREMENTS FOR COMMERCIAL DEVELOPMENT PROJECT¹⁷

(Under Article 26)

The Commercial Development Project shall be maintained in compliance with the following:

(i) ...

[Note: To be enumerated, to cover any specific requirements that may be necessary for the maintenance of the Commercial Development Project, inter-alia on account of the same being implemented on air-space or adjoining plots, to the Station Development Project or the Redevelopment Project]



¹⁶ To be filled from DPR.

¹⁷ Note: SLA's to be formulated independently, for each Project. Present requirements may be appropriately modified.

SCHEDULE 7

CONDITIONS PRECEDENT

(Under Article 4.2 and Article 4.3)

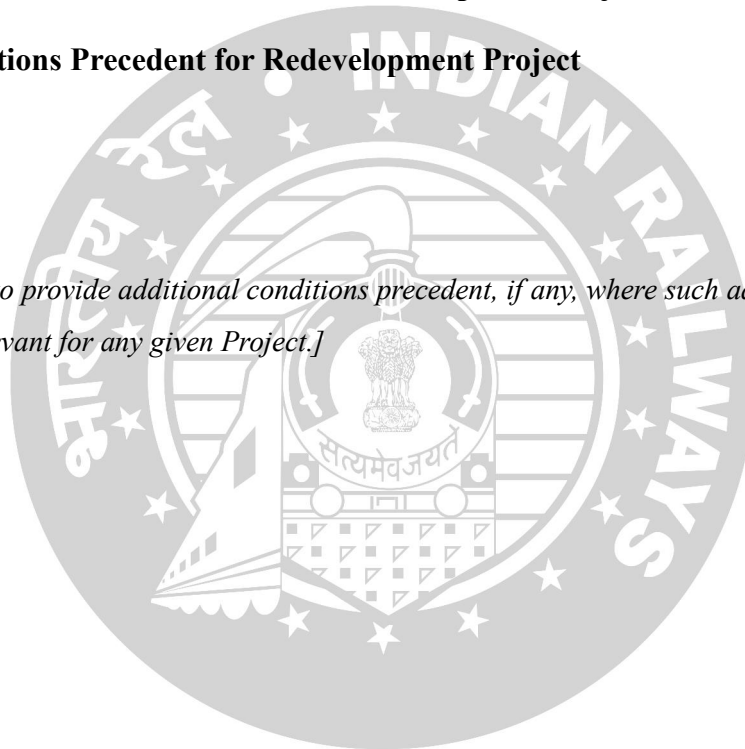
[Refer to SCDA which will provide additional conditions precedent, if any, where such additional conditions precedent are relevant for any given Project]

Part – A Conditions Precedent for Commercial Development Project

Part – B Conditions Precedent for Station Development Project

Part – C Conditions Precedent for Redevelopment Project

[Note: Schedule to provide additional conditions precedent, if any, where such additional conditions precedent are relevant for any given Project.]



SCHEDULE 8¹⁸**PROJECT FACILITIES***(Under Article 2.1 and Schedule 2A)***Schedule 8A (Station Development Project Facilities)¹⁹**

Without prejudice to the other terms of the Agreement the Developer shall provide the following services, amenities and facilities, at the Station Development Project:

S. No.	Details of Facilities	Number/ Extent	Location	Description and other requirements
1.	Ticketing counters/booths			
2.	Ticketing vending machine			
3.	Pedestrian facilities			
4.	Cloak room			
5.	Waiting room			
6.	Tree plantation			
7.	Facilities for disabled			
8.	Lifts, stairs and escalators			
9.	Public address system			
10.	Public information system			
11.	Refreshment facilities			
12.	Public access telephone, cyber			

¹⁸ To be filled from DPR.

¹⁹ This is only an indicative list and may be modified based on Project specific requirements.

	café			
13.	Sign systems and automation			
14.	Sign systems and automation			
15.	Facilities for tour operators and travel agents			
16.	Facilities for hiring of taxies and transportation			
17.	Bank and foreign exchange facilities, ATM			
18.	Toilets			
19.	Taxi booth			
20.	Mobile and laptop charging points			
21.	Smoke room, office facilities for bus travellers			
22.	Book shop			
23.	Convenience shops			
24.	Food & beverages outlets			
25.	Temporary exhibition facilities			
26.	Landscaping and others			

Schedule 8B (Redevelopment Project Facilities)²⁰



²⁰This is to be filed based on Project specific requirements.

SCHEDULE 9²¹

STANDARDS AND SPECIFICATIONS

Without prejudice to the other requirements of the Agreement, the Project shall adhere to the below set standards and specifications:

Schedule 9A Standards and Specifications for Railway Stations

1. Subject to the provisions of paragraph 2 below, of this Schedule 9A, the Station Development Project shall conform to the Manual of Specifications and Standards for Railway Stations, as approved by the Ministry of Railways, and as may be amended, modified and replaced from time to time.
2. An authenticated copy of the said Manual has been made available to the Developer by the Authority.
3. Notwithstanding anything to the contrary contained in the aforesaid Manual, the specifications and standards specified in the SCDA, if any, shall apply to the Station Development Project and for the purposes of the Agreement, the aforesaid Manual shall be deemed to be amended to the extent set forth in the SCDA.

Schedule 9B Standards and Specifications for the Redevelopment Project

[Note: To be enclosed]

Schedule 9C Standards and Specifications for the Parking Facilities

[Note: To be enclosed]

Schedule 9D Standards and Specifications for the Station Facilities

*[Note: To be enclosed against each item of Station Development Project Facilities enumerated in **Schedule 8A** (Station Development Project Facilities)]*

²¹ To be filled from DPR.

Schedule 9E Standards and Specifications for the Parcel Facilities

[Note: To be enclosed]



SCHEDULE 10²²

PROJECT UTILITY REQUIREMENTS²³

(Under Article 2.1)

Part A: WATER SUPPLY

1. Water supply for the Station Area, Redevelopment Project (if in the station area) and commercial Development shall be arranged by Developer.
2. Water metering for all the three facilities shall be separate.
3. Arrangement for storage of.....KL shall be made. Overhead....KL and Underground.....KL.
4. Priority for water at station shall be above commercial development.
5. Potable water for passengers for.....KL shall be available at any time at the station.

Part B: ELECTRICITY SUPPLY

1. Substation for arranging electricity from the local supply shall be arranged by the Developer.
2. Electricity supply for the Station Area, Redevelopment Project (if in the station area) and commercial Development shall be arranged by Developer.
3. Electrical metering for all the three facilities shall be separate.
4. Sub-station.....KV, transformers.....KVA [Total....Nos.] for the three facilities shall be separate.
5. Priority for electricity supply at station shall be above commercial development.
6. Silent Type generator.....KVA [.....Nos] shall be provided.

Part C: SEWAGE DISPOSAL

1. Sewage treatment plant ofKL shall be provided as per approved specification.
2. Common sewage treatment facility for all the three development shall be arranged.

²² To be filled from DPR.

²³ This list is indicative and would need to be considered and modified for each Project

Part D: RAIN WATER HARVESTING

Composite facility for the rain water harvesting for the complete development for ...KL capacity shall be developed in the railway land.

Part E: SOLAR PANEL

[.....M2] AREA shall be provided with solar panel for lighting in the station area.



SCHEDULE 11²⁴

DRAWINGS FOR MANDATORY PROJECT

(Under Article 16.4)

Specify the Drawings for Mandatory Project duly numbered that is a part of the DPR is furnished to the Developer.



²⁴ To be filled from DPR.

SCHEDULE 12

COMPLETION CLEARANCE

(Under Article 1.1.26)

[Indicative Format]

I,(Name of the Nodal Officer), acting as Team leader of M/s, under and in accordance with the concession Agreement dated.....(the “**Agreement**”) , for the Railway Station(name of station) for ****corridor in the city*** on design, build, finance, operate and transfer(DBFOT) basis, through(name of Developer), hereby certify that the tests specified in Article....and Schedule.... Of the Agreement have been successfully undertaken to determine compliance of the _____. Railway station can be safely and reliably placed in commercial service of the users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of Railway Station have been completed , and the Railway Station is ready for entry into commercial operation on this theday of 20....

SIGNED, SEALED AND
DELIVERED

For and on behalf of

(Signature)

(Name)

(Designation)

(Address)

Note: Identical Format to be utilised for any Provisional Certificate

SCHEDULE 13²⁵

RAILWAY DEVELOPMENT PROJECT AND RAILWAY OPERATIONAL ACTIVITIES

SCHEDULE 13A: RAILWAY DEVELOPMENT PROJECT

(Under Article 1.1.122)

The following are the activities/works comprised in Railway Development Project, excluded from the Project:

1. Track work
2. Signalling and Telecommunication works
3. Over Head Electrical works
4. Telecommunication works

SCHEDULE 13B: RAILWAY OPERATIONAL ACTIVITIES²⁶

(Under Article 1.1.123)

The following are the activities/works comprised in Railway Operational Activities, excluded from the Project:

1. Any track works but if any dismantling is required shall be undertaken by Railway;
2. Signaling and Telecommunication works for Railway operations and other Telecommunication works;
3. OHE works;
4. Railway train operations;
5. Carriage and Wagon related works;
6. Railway Protection Force (RPF) and related;
7. Government Railway Police;
8. Parcel handling / booking / receipt / delivery;
9. Sale of tickets / refunds / reservations; and
10. And other activities/works as may be specified by Authority;

²⁵ To be filled from DPR.

²⁶ MOR to finalize the list of Railway Operational Activities from the items set out under Clause 2.8.1 of the Manual. The items not mentioned in this Schedule and items if any from Clause 2.8.1 of Manual proposed to be within the Developer's scope of responsibilities to be clarified. This list is indicative and would need to be considered and modified for each Project

11. Rail Display Network
12. [...
13. ...]



SCHEDULE 14

CONSULTANTS' FUNCTIONS²⁷

(Under Article 24.2, 28.3 and 28.4)

Part – A

Terms of Reference of Other Consultants

- Safety Consultant

-

[Note: Requirements towards the relevant consultants, and their terms of reference, as required, to be enumerated based on the requirements of the Project]

Part – B

Facilities to be provided to Consultants and Nodal Officer

- PMC
- Nodal Officer
- Other Consultants
 - Safety Consultant

[Note: Requirements towards the relevant facilities to be enumerated based on the requirements of the Project]

²⁷ To be filled from DPR.

SCHEDULE 15

EXISTING CONTRACTS

(Under Article 25.1 and Schedule 21)

Refer to relevant Schedule of Station Facility Management Agreement



SCHEDULE 16²⁸

PROVISIONAL SUMS

(Under Article 30.1)

S. No.	PROVISIONAL SUM ITEMS	Provisional Amount (in INR)
	PART A: MANDATORY PROJECT	
1.	Allow for additional testing as ordered by the Employer's Representative.	
2.	Allowance for design test check from third party	
3.	Allow for furniture, cabinet and shelves.	
4.	Allow for Submission of As Built Drawings.	
5.	Allow for spares items/special items.	
6.	Allow for Artwork and landscaping	
7.	Allow for Architectural finishes including false ceiling.	
8.	UPS complete	
	PART B: COST OF UTILITIES	
1.	Allow for diversion and support of utilities as stated in the employer's Requirements	
	TOTAL FOR ALL PROVISIONAL SUM ITEMS	

Note: These are indicative; however, the list for provisional items for each station shall be updated based on the technical and financial study of individual station.

²⁸ To be filled from DPR.

SCHEDULE 17²⁹

INDICATIVE FORMAT OF ESCROW AGREEMENT³⁰

(Under Article 33)

This Escrow Agreement dated this [insert] day of [insert], [insert] is entered into at _____

BY AND BETWEEN:

1. [insert name of the Developer], a company incorporated under the Companies Act, 1956 and having its registered office at [insert address] (hereinafter referred to as the “**Developer**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the **FIRST PART**.
2. [insert name and particulars of Lenders’ Representative], and having its registered office at [insert address] acting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Escrow Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes); of the **SECOND PART**
3. [Insert name and particulars of the Escrow Bank] and having its registered office at [insert address] (hereinafter referred to as the “**Escrow Bank**” which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes); of the **THIRD PART** and
4. [Insert Name of Authority] (hereinafter referred to as “**Authority**”, having its office at _____ which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and assigns) of the **FOURTH PART**

Developer, Lenders’ Representative, Escrow Bank and Authority shall hereinafter individually be referred to as “**Party**” and collectively as “**Parties**”.

²⁹ To be filled from DPR.

³⁰ Note: This draft is indicative and will need to be suitably customized/ modified depending on the specific requirements of each transaction.

WHEREAS

- A. Authority has entered into a Development Agreement dated *[insert date]* with the Developer (the "**Development Agreement**") for the conceptualizing, designing, financing, construction, marketing, Leasing/Licensing, operating and maintaining of the Project a copy of which is annexed hereto and marked as **Annexure-A** to form part of this Escrow Agreement.
- B. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Development Agreement requires the Developer to establish Escrow Account (hereinafter referred to as the "**Escrow Account**") inter-alia, on the terms and conditions stated therein.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Escrow Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties with the intent to be legally bound, hereby agree as follows.

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"Cure Period" means the period specified in this Escrow Agreement for curing any breach or default of any provision of this Escrow Agreement by the Developer, and shall commence from the date on which a notice is delivered by Authority or the Lenders' Representative, as the case may be, to the Developer asking the latter to cure the breach or default specified in such notice;

"Development Agreement" means the Development Agreement referred to in Recital (A) above and annexed hereto as Annexure-A;

“Escrow Account” means the Escrow Account as mentioned in Recital (C) hereto and established in terms of and under this Escrow Agreement and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Article 6.1;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Payment Date” means, in relation to any payment specified in Articles 4.1 and 4.2, the date(s) specified for such payment;

“Payment Period” shall refer to mean the period commencing from the date of the execution of the Development Agreement till the date all the amounts due and payable to Authority by the Developer is paid in accordance with the provisions of the Development Agreement;

“Reserve Sub Account/ Retention Account shall have the meaning ascribed to it in Article 4.1.1 (viii); and,

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Article 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 respective payment date(s).

1.2 Interpretation

- 1.2.1 In this Escrow Agreement, unless the context otherwise requires, references to Lenders' Representative shall mean references to the Lenders' Representative, acting for and on behalf of Lenders.
- 1.2.2 The words and expressions beginning with capital letters and defined in this Escrow Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Escrow Agreement and not defined herein but defined in the Development Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Development Agreement.
- 1.2.3 References to Articles are, unless stated otherwise, references to Articles of this Escrow Agreement.

- 1.2.4 The rules of interpretation stated in Article 1.2 of the Development Agreement shall apply, **mutatis mutandis**, to this Escrow Agreement.
- 1.2.5 Words not defined in the Escrow Agreement shall have the same meaning as prescribed in the Development Agreement.

ARTICLE 2: ESCROW ACCOUNT

2.1 Escrow Bank to act as Trustee

- 2.1.1 The Developer hereby appoints the Escrow Bank to act as trustee for Authority, the Lenders' Representative and the Developer collectively in connection herewith and authorizes the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental and/or ancillary thereto, also to perform and undertake such obligations as set out in this Escrow Agreement and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Developer hereby declares that all rights, title and interest in and to the Escrow Accounts shall be vested in the Escrow Bank, which shall hold the same in trust for Authority, the Lenders' Representative and the Developer collectively, and applied in accordance with the terms of this Escrow Agreement. No person other than Authority, the Lenders' Representative and the Developer, shall have any rights and/or interests as the beneficiaries of or third party beneficiaries under this Escrow Agreement.

2.2 Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all the payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Escrow Agreement. The Escrow Bank shall hold and safeguard the Escrow Accounts during the term of this Escrow Agreement and shall treat the amount in the Escrow Accounts as monies deposited by the Developer, the Lenders and Authority with the Escrow Bank. In performing its functions, obligations and duties under this Escrow Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for, Authority, the Lenders' Representative and the Developer

or their nominees, successors or assigns, in accordance with the provisions of this Escrow Agreement.

2.3 Establishment and operation of the Escrow Account

2.3.1 Within 30 (thirty) days from the date of this Escrow Agreement, and in any case prior to the Appointed Date, the Developer shall open and establish the Escrow Accounts with the _____ (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Indian Rupees.

2.3.2 The Escrow Bank shall maintain the Escrow Accounts in accordance with the terms of this Escrow Agreement, and/or its usual practices, Applicable Laws and pay the maximum rate of interest payable to similar customers on the balance in the said accounts from time to time.

2.3.3 The Escrow Bank and the Developer shall, after consultation with Authority and the Lenders' Representative, agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Accounts, but in the event of any conflict or inconsistency between this Escrow Agreement and such mandates, terms and conditions, or procedures, this Escrow Agreement shall prevail.

2.4 Escrow Bank's fee

In consideration of exercise of the rights, powers, authorities, discretion and performance of obligations, 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 Developer. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses (as defined in the Development Agreement) and shall be appropriated from the Escrow Account in accordance with Articles 4.1 and 4.2 hereof.

2.5 Right of the Parties

The rights of Authority, the Lenders' Representative and the Developer in the monies held in the Escrow Account are set forth in their entirety in this Escrow Agreement and Authority, the Lenders' Representative and the Developer shall have no other rights against or to the monies in the Escrow Accounts.

2.6 Substitution of the Developer

The Parties hereto acknowledge and agree that upon Substitution of the Developer with the Nominated Company, pursuant to the Substitution Agreement, it shall be deemed for the purposes of this Escrow Agreement that the Nominated Company is a Party hereto and the Nominated Company shall accordingly be deemed to have succeeded to the rights and obligations of the Developer under this Escrow Agreement on and with effect from the date of substitution of the Developer with the Nominated Company.

ARTICLE 3: DEPOSITS INTO ESCROW ACCOUNTS

3.1 Deposits by the Developer

3.1.1 The Developer agrees and undertakes that it shall deposit or cause to be deposited into and/or credit the Escrow Account during the term hereof with:

- (a) all funds received by the Developer from its shareholders, in any manner or form;
- (b) all monies received in relation to the Project from any source, including the Lenders, lenders of the subordinated debt and Authority;
- (c) all monies received in relation to the Project Revenues and other revenues;
- (d) all proceeds received pursuant to any insurance claims with respect to the Project;
- (e) all money received by the Developer (and not by Authority) by way of transfer fee towards charges in respect of transfer of sub-lease; and
- (f) any other revenues and/or receipts in respect of the Project.

3.1.2 Provided that, it is expressly agreed by and between the Parties that 75% (seventy five percent) of all amounts received as Project Revenues and other revenues during the Term of the Development Agreement shall be directly deposited to the Sub-Account for payment of the Lease Premium, Annual Lease Rent and such other Consideration till all such payments are fully paid to Authority. The Developer may, at any time, during the subsistence of this Escrow Agreement, make deposits of its equity and other funds including Subordinated Debt into the Escrow Account provided that the provisions of this Escrow Agreement shall apply to all such

deposits. In case of invoking of a Bank Guarantee(s) or Security Deposit by Authority due to the payment default by the Developer, money realized from such proceeds shall be deemed to have been received in the Escrow Account from the Developer through interest free Subordinated Debt and to have been paid to Authority towards Lease Premium.

3.2 Deposits by Authority

Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with Termination Payment due to the Developer in accordance with the Development Agreement. Provided that Authority shall be entitled to appropriate, from the aforesaid amounts, all outstanding amounts (including the Annual Lease Rent and damages for termination) due and payable to it by the Developer and the balance remaining shall be deposited into the Escrow Account.

3.3 Deposits by Lenders

The Lenders' Representative shall ensure through the Escrow Agreement that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to and/or in respect of the Project; provided that notwithstanding anything to the contrary contained in the Escrow Agreement, the Lenders shall be entitled to ask the Escrow Bank to directly credit its monies to a Sub-Account for payments to the Sub-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 credit balances of the respective Escrow Accounts shall be credited to the Escrow Accounts; provided that the Escrow Bank shall be entitled to appropriate therefrom, the fee and expenses due to it from the Developer in relation to the Escrow Accounts and credit the balance amount to the Escrow Account.

ARTICLE 4: WITHDRAWALS FROM ESCROW ACCOUNTS

4.1 Withdrawals during the Construction Period

It is expressly agreed between the Parties hereto that during the Construction Period, at the beginning of every month, or at such shorter intervals as the Lenders'

Representative, the Developer and Authority 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):

- (i) all Taxes due and payable by the Developer;
- (ii) all payments towards repayment or refund of monies to third parties and as certified by Authority;
- (iii) all payments due to Authority towards Lease Premium, Annual Lease Rent, liquidated damages and/or amounts payable by the Developer to the Authority under Station Facility Management Agreement including but not limited to Termination Payments therein;
- (iv) all payments to Sub Contractors relating to the Project and on the construction of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (v) expenses and other cost incurred by the Authority in terms of the Development Agreement and certified by Authority as due and payable to Authority, including any claims or demands in connection with or arising out of Developer's Event of Default;
- (vi) all direct administrative expenses of the Developer on the construction of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
- (vii) debt service in respect to the loans granted under the Financing Agreement provided full amount of the Lease Premium has already been paid to Authority; and,
- (viii) credit the balance, if any to a 'Reserve Sub Account/ Retention Account' created for the said purpose.

Provided that the monies held to the credit of the Reserve Sub Account/Retention Account shall be appropriated in the same order as provided in this Article 4.1 on the next date of withdrawal from the Escrow Account or as may be directed by Authority

Provided that notwithstanding anything contained to the contrary in the Development Agreement, in the event of a payment default, Authority shall be entitled to withdraw all the funds held to the credit of the Escrow Account including the Reserve Sub-Account/ Retention Account and the order of withdrawal/ disbursement as provided for in the first proviso to this Article 4.1 hereinabove shall only be restored upon the cessation of the Payment Default.

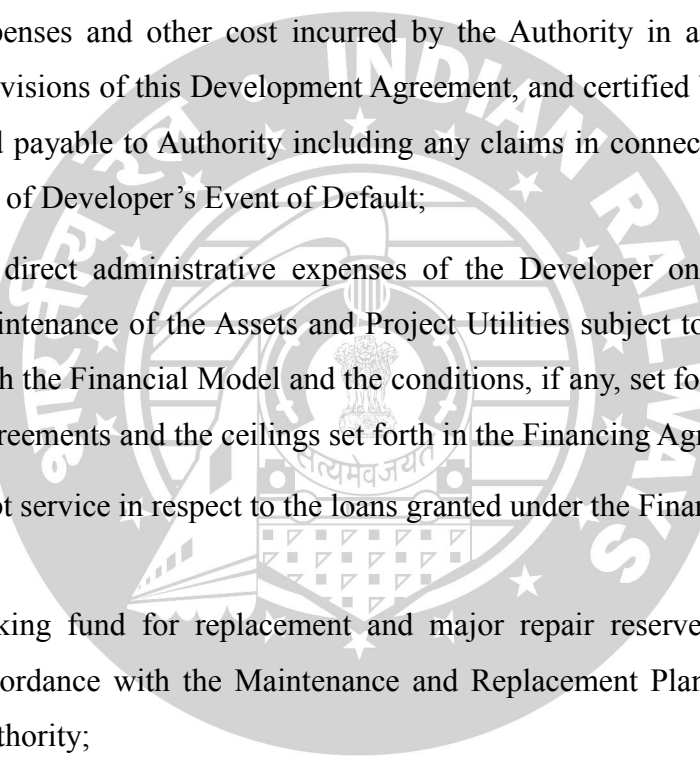
Further provided that notwithstanding anything to the contrary contained in this Development Agreement, any instructions given by Authority to the Escrow Bank during the subsistence of Payment Default shall be strictly complied with and adhered to unconditionally.

Explanation: For the avoidance of any doubt, it is clarified that in relation to this Escrow Agreement, the term “direct expenses” shall mean expenses towards materials and labour that relate directly to (i) design, finance, construction, development, marketing, operation and maintenance and commercial use of the Assets and Project Utilities by the Developer during the Term; (ii) demanding, charging, collecting, retaining and revision of the Sub Lease rentals as per the prevailing market rates to the Sub-Developers and does not include any indirect expenses and the term “direct administrative expenses” shall mean such expenses of office and accounts related to the Project under the Development Agreement.

4.2 Withdrawals after Completion Clearance

It is expressly agreed between the Parties hereto that after the issue of Completion Clearance by the Nodal Officer and during currency of the Term, at the beginning of every month, or at such shorter intervals as the Lenders’ Representative, the Developer and Authority 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):

- (i) all Taxes due and payable by the Developer;

- 
- (ii) all payments towards repayment or refund of monies to third parties and as certified by Authority;
 - (iii) all payments due to Authority towards Additional Lease Premium, Annual Lease Rent and Liquidated Damages;
 - (iv) all payments towards Sinking Fund;
 - (v) all payments to Sub Contractors relating to incurred or accrued O&M Expenses on the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
 - (vi) expenses and other cost incurred by the Authority in accordance with the provisions of this Development Agreement, and certified by Authority as due and payable to Authority including any claims in connection with or arising out of Developer's Event of Default;
 - (vii) all direct administrative expenses of the Developer on the operation and maintenance of the Assets and Project Utilities subject to and in accordance with the Financial Model and the conditions, if any, set forth in the Financing Agreements and the ceilings set forth in the Financing Agreements;
 - (viii) debt service in respect to the loans granted under the Financing Agreement;
 - (ix) sinking fund for replacement and major repair reserve subject to and in accordance with the Maintenance and Replacement Plan duly approved by Authority;
 - (x) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 - (xi) any reserve requirements to be credited to the Reserve Sub-Account set forth in the Financing Agreements; and
 - (xii) Distributions in accordance with the instructions of the Developer.

4.3 Details of Payment Obligations

Not later than 60 (sixty) days prior to the commencement of each Accounting Year, the Developer shall provide to the Escrow Bank, with prior written approval of

Authority and the Lenders' Representative, details of the amounts likely to be required for each of the payment obligations as set forth in Article 4.1 and Article 4.2; provided that such amounts may be subsequently modified, with prior written approval of Authority and the Lenders' Representative, if such modification becomes necessary, due to or on account of any fresh information received during the course of the year.

4.4 Withdrawals during Cure Period and Substitution Process

On receipt of the Notice of Intention to Terminate from Authority, the Escrow Bank shall stop payment from respective Sub-Accounts for items specified at (vi) to (vii) of Article 4.1 and (vi) to (x) of Article 4.2 except as specifically directed by Authority till further instruction of Authority.

4.5 Withdrawals upon Termination

Upon Termination of the Development Agreement, all amounts standing to the credit of the Escrow Accounts shall, notwithstanding anything in the Development Agreement, be appropriated and dealt with solely by the written instruction of Authority in the following order:

- (a) outstanding amounts payable to Authority;
- (b) all taxes due and payable by the Developer;
- (c) all payments and damages certified by Authority as due and payable to it by the Developer pursuant to the Development Agreement, including any claims or demands in connection with or arising out of termination of the Development Agreement;
- (d) incurred or accrued O & M Expenses on the Assets and Project Utilities;
- (e) any other payments required to be made under the Development Agreement;
- (f) outstanding debt service including the balance of Debt Due;
- (g) outstanding Subordinated Debt; and
- (h) balance, if any, in accordance with the instructions of the Developer.

Provided that the provisions of this Article IV and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in this Article 4.5 have been fully discharged.

4.6 Application of insufficient funds

Funds in the Escrow Accounts shall be applied in the serial order of priority set forth in Articles 4.1, 4.2, and 4.5 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 the complete exhaustion thereof.

4.7 Application of insurance proceeds

Notwithstanding anything in this Escrow Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilized for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Assets, Project Utilities, and the Project Land, the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

4.8 Withdrawals for Pre-payment of Lease Premium

It is expressly agreed by and between the Parties that the amount lying in the Sub-Account for payment towards Lease Premium specifically due to direct crediting of the 75% (seventy five percent) of all amounts received by the Developer from the Project Revenues and other revenues during the Term shall be withdrawn and appropriated every month by Authority from the Escrow Account towards pre-payment of subsequent instalments till all the payments against the subsequent instalments are fully paid to Authority.

ARTICLE 5: OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

Monies and other property received by the Escrow Bank under this Escrow Agreement shall, until used or applied in accordance with this Escrow 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 balance

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 Authority and/or the Developer

and/or the Lenders' Representative as to the relevant payment dates), the Escrow Bank shall notify the Lenders' Representative and Authority of the balances, in aggregate, 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 Developer upon a certificate signed by or on behalf of the Developer;
- (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 Authority and the Lenders' Representative of any notice or document or communication received by it in its capacity as the Escrow Bank from the Developer or any other person in terms of the Development Agreement or in connection herewith; and,
- (d) shall, within 5 (five) Business Days after, receipt, deliver a copy to the Developer of any notice or document or communication received by it from Authority and 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 Accounts. 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 Accounts 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 Accounts and shall comply with all Applicable Law in this regard. 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.

ARTICLE 6: ESCROW DEFAULT

6.1 Escrow Default

6.1.1 The following events shall constitute an event of default of by the Developer (an **"Escrow Default"**) unless such event of default has occurred as a result of a Force Majeure Event or any act or omission of Authority or the Lenders' Representative:

- (a) the Developer commits breach of this Escrow Agreement by failing to deposit any receipts into the Escrow Accounts as provided herein and fails to cure such breach by depositing the same into the Escrow Accounts within a Cure Period of 5 (five) Business Days;
- (b) the Developer causes the Escrow Bank to transfer funds to any account of the Developer in breach of the terms of this Escrow Agreement and the Development Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Accounts or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or,
- (c) the Developer commits or causes any other breach of the provisions of this Escrow 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 same shall be deemed to be a Developer's Event of Default under the Development Agreement and consequences thereof shall be dealt with under and in accordance with the provisions of the Development Agreement.

ARTICLE 7: TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Escrow Agreement shall remain in full force and effect till the termination of the Development Agreement, either due to the expiry of the Term or otherwise, and the amount available in the Escrow Account has been fully paid in accordance with this Escrow Agreement and till all the obligations of the Developer to Authority has been fully discharged pursuant to the Development Agreement, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Escrow Agreement. However, the Lender's Representative shall remain a party to the Escrow Agreement only so long as any sum remains to be advanced or is outstanding from the Developer in respect of the debt, guarantee or financial assistance received by the Developer from the Lenders. Beyond this period this Escrow Agreement shall continue to be in effect with the Escrow Bank, the Developer and Authority as parties to it.

The Developer may, by not less than 45 (forty five) days prior notice to the Escrow Bank, Authority and the Lenders' Representative, terminate this Escrow Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to Authority and the Lenders' Representative and arrangements are made satisfactory to Authority and 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 Escrow Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.2 Closure of Escrow Account

The Escrow Bank shall, at the request of Authority, the Developer and the Lenders' Representative made on or after the payment by the Developer of all outstanding amounts under the Development Agreement and the Financing Agreements including the payments specified in this Escrow Agreement, 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 Developer. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

ARTICLE 8: SUPPLEMENTARY ESCROW AGREEMENT

- 8.1 The Lenders' Representative and the Developer shall be entitled to enter into a supplementary escrow agreement (“**Supplementary Escrow Agreement**”) with the Escrow Bank providing, inter alia, for detailed procedures and documentation for withdrawals from Sub-Accounts or the Escrow Account pursuant to Articles 4.1, 4.2 and 4.3 and for matters not covered under this Escrow Agreement such as the rights and obligations of Lenders investment of surplus funds, restrictions on withdrawals by the Developer in the event of breach of this Escrow Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto, provided that such Supplementary Escrow Agreement shall not contain any provision which is inconsistent with or contrary to the terms of this Escrow Agreement and in the event of any conflict or inconsistency between provisions of this Escrow Agreement and such Supplementary Escrow Agreement, the provisions of this Escrow Agreement shall prevail.

ARTICLE 9: INDEMNITY

- 9.1 **General indemnity**
- 9.1.1 The Developer hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold Authority, the Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of any breach by the Developer of any of its obligations under this Escrow Agreement or on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.
- 9.1.2 Authority hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold the Developer harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of Authority to fulfill any of its obligations under this Escrow Agreement materially and adversely affecting the performance of the Developer's obligations under the Development Agreement or the Agreement other than any loss, damage, cost and

expenses, arising out of acts done in discharge of their lawful functions by Authority, its officers, servants and agents.

- 9.1.3 The Escrow Bank hereby indemnifies and agrees and undertakes that it shall, at all times, defend and hold Authority / the Developer harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfill its obligations under this Escrow Agreement including the failure materially and adversely affecting the performance of Authority / the Developer's obligations under the Development 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/ demands**

In the event that any Party hereto receives claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 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/or shall not settle or pay the claim/ demand 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 at its (Indemnifying Party's) risk, costs and expense. 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.

ARTICLE 10: DISPUTE RESOLUTION

10.1 **Disputes - Amicable Settlement**

The Parties shall use their respective reasonable endeavours to settle any dispute amicably. If a dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Article 10.2 shall apply.

10.2 **Dispute resolution**

10.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Escrow 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 Article 10.3.

10.2.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Escrow 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.

10.3 **Arbitration**

10.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 10.2, shall be finally decided by reference to arbitration by arbitrator(s) to be appointed in accordance with the arbitration rules specified in the Development Agreement and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be _____, and the language of arbitration proceedings shall be English.

10.3.2 A notice of the intent (“**Notice of Intent**”) to refer the dispute to arbitration may be given by one or more Parties (the “**Claimant(s)**”) to one or all Parties (the “**Respondent(s)**”). There shall be 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.

10.3.3 The arbitrator(s) shall make a reasoned award (the “**Award**”). Any such Award made in any arbitration held pursuant to this Article X shall be final and binding on the Parties as from the date it is made, and the Parties hereto agree and undertake to obey and implement such Award without delay.

10.3.4 The Parties hereto agree that an Award may be enforced against any of the Parties hereto, as the case may be, and their respective assets wherever situated.

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

except for any obligation of Authority, which shall automatically cease and come to an end upon the expiry or Termination of the Development Agreement or this Escrow Agreement.

10.3.6 This Article 10 shall survive the termination or expiry of this Escrow Agreement.

ARTICLE 11: MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

This Escrow Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to this Article XI and Article X, the Courts at _____ alone shall have exclusive jurisdiction over all matters arising out of or relating to this Escrow Agreement.

11.2 Priority of agreements

In the event of any conflict between the Development Agreement and this Escrow Agreement, the provisions contained in the Development Agreement shall prevail over this Escrow Agreement.

11.3 Alteration of terms

All additions, amendments, modifications and variations to this Escrow Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.4 Waiver

11.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Escrow 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 Escrow 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 Escrow Agreement in any manner.

11.4.2 Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Escrow Agreement or any obligation there under 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.

11.5 No third party beneficiaries

This Escrow Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.6 Survival

11.7.1 Termination of this Escrow 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 Escrow 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 Severability

If for any reason whatsoever, any provision of this Escrow Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner and the Parties will negotiate in good faith with a view to agreeing to one or more provisions, which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10 of this Escrow Agreement or otherwise.

11.8 Successors and assigns

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

11.9 Notices

All notices, requests, demands or other communication required or permitted to be given under this Escrow Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the address indicated below:

- (i) In the case of Authority, to: Attention: []
Add:
E mail: []
Facsimile: []
- (ii) In the case of notices to Developer, to: Attention: []
Add:
E mail: []
Facsimile: []
- (iii) In the case of Lenders' Representative, to: Attention: []
Add:
E mail: []
Facsimile: []
- (iv) In the case of Escrow Bank, to: Attention: []
Add:
E mail: []
Facsimile: []

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given shall have last notified the Party giving the same in the manner provided in this Article 11.19, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as

provided in this Article 11.9 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) Sent by registered post, 3 (Three) Business Days after posting it; and
- (ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

11.10 Language

All notices, certificates, correspondence and proceedings under or in connection with this Escrow Agreement shall be in English.

11.11 Authorized Representative

Each of the Parties shall, by notice in writing, designate their respective authorized representatives through whom only all communications will be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorized representative by similar notice.

11.12 Original Document

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

IN WITNESS WHEREOF this Escrow Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and date first above written.

For and on behalf of [*Insert Name of Authority*]

BY: _____

Name:

Designation

Address

Fax No.

For and on behalf of [*insert name of the Developer*]

BY: _____

Name:

Designation

Address

Fax No.

For and on behalf of [*insert name of the Escrow Bank*]

BY: _____

Name:

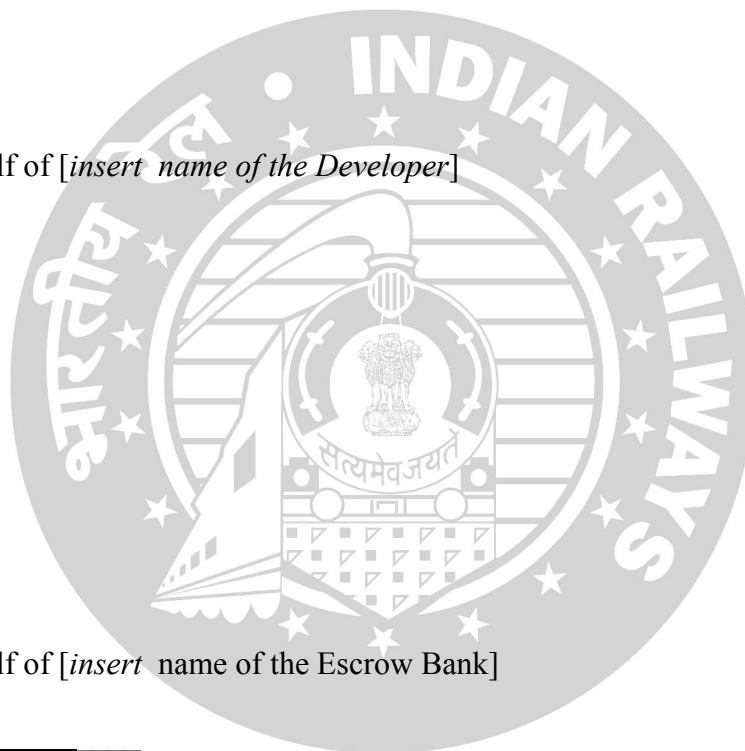
Designation

Address

Fax No.

For and on behalf of [*insert name of the Lenders' Representative*]

BY: _____



Name:

Designation

Address

Fax No.

1. Witness

2. Witness



SCHEDULE 18

PERFORMANCE GUARANTEE FOR PROJECT

(Under Article 10.1)

Format of Performance Guarantee for Project³¹

(To be executed on Non Judicial Stamp paper of appropriate value)

Date:

No.

To,

[insert]

[Insert Name of Authority] (Authority)

[insert address]

In consideration of [Insert Name of Authority] (hereinafter referred to as the “Authority”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having agreed to grant to _____ (the “Developer”) the right to undertake the _____ project (the “Project”) in accordance with the terms of the Letter of Award dated _____ and as a pre-condition to the execution of the Development Agreement pursuant to the Request for Proposal dated _____ issued by Authority (the “Bid Documents”), the Developer has to submit a Performance Guarantee for Project in the form of a Bank Guarantee to Authority.

KNOW ALL MEN by these presents that we _____ (name of bank) of _____ (city and country) having our registered office at _____ (hereinafter referred to as the “Bank”, which expression shall, unless repugnant to the context or meaning thereof, include its

³¹ Note: This format is indicative and would need to be suitably updated/modified depending on the specific requirements of each transaction.

successors, administrators, executors and assigns) and having a net worth of more than _____ and wherein we have been requested by the Developer to provide the Performance Guarantee in the form of bank guarantee, we do hereby unconditionally guarantee and undertake to pay to Authority immediately on first written demand from Authority any or all money payable by the Developer to the extent of _____/- (Rupees _____ only) (the “Bank Guarantee”) as aforesaid at any time up to _____ six months after the last of completion of the following obligations: (a) the Developer has paid to Authority all the instalments of the Lease Premium as per the terms of the Development Agreement; (b) the Developer has completed the construction of the entire Project in terms of the Agreement; (c) the Completion Clearance has been issued under the Development Agreement in respect of the Commercial Development Project (as required under the terms of the Development Agreement).

Any such written demand made by Authority on the Bank stating that the Developer is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank, as regards amount due and payable by the Bank under this Guarantee notwithstanding any difference between Authority and the Developer or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till Authority discharges this Bank Guarantee.

This Bank Guarantee shall remain valid and in force until the expiry of six months from the date the last of the following have been fulfilled/ complied with:

- (a) the Developer has paid to Authority all the instalments of the Lease Premium as per the terms of the Development Agreement;
- (b) the Developer has completed the construction of the entire Project in terms of the Agreement;
- (c) the Completion Clearance has been issued under the Development Agreement in respect of the Commercial Development Project (as required under the terms of the Development Agreement).

The Bank Guarantee shall be a continuing irrevocable obligation.

The Authority shall be the sole judge to decide as to whether the Developer is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents and the decision of Authority that the Developer is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the Authority and the Developer or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

In order to give full effect to this Guarantee, Authority shall be entitled to treat the Bank as the principal debtor. Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Bank Guarantee, to vary or to extend the terms of the Development Agreement, from time to time. Authority shall have the fullest liberty without affecting this Bank Guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the _____ (name of the Developer) and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Bid Documents, any other course or remedy or security available to Authority.

The Bank shall not be relieved/released of its obligations under these presents by any exercise by Authority of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of Authority or any other indulgence shown by Authority to the said Developer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving/releasing the Bank from its such liability.

The Bank also agrees that Authority shall at its option be entitled to enforce this Bank Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Developer and notwithstanding any security or other guarantee that Authority may have in relation to the Developer's liabilities.

This Guarantee shall not be affected by any change in the constitution or winding up of the Developer or the Bank or any absorption/merger or amalgamation of the Developer or the Bank with any other Person.

Authority shall be entitled to make unlimited number of demands under this Bank Guarantee, provided that the aggregate of all sums paid shall not exceed the guaranteed amount of ` _____/- (Rupees _____ only).

Upon receipt of a demand from Authority the Bank shall make the payment of the guaranteed amount forthwith, without any proof for document, notwithstanding any dispute by the Developer, and such a demand shall be a conclusive evidence of the Bank's liability to pay Authority. The Bank Guarantee shall be a continuing irrevocable obligation. Invocation of this Bank Guarantee by any official of Authority shall be valid and unquestionable.

The Bank shall not revoke this Guarantee during its currency except with the previous express consent of Authority in writing.

Any waivers, extensions of time or other forbearance given or variations required under the Bid Documents or any invalidity, unenforceability or illegality of the whole or any part of the Bid Documents or rights, of any Party thereto, or amendment or other modification of the Bid Documents, or any other fact, circumstance, provision of statute of law which might, entitle the Bank to be released in whole or in part from its undertaking, or makes its liability to be secondary and not primary, shall not in any way release the Bank from its obligations under this Bank Guarantee.

Any demands shall be deemed to have been duly served: if delivered by hand, when left at _____ (address of issuing branch of the Bank); and if given or made by pre-paid registered post or facsimile transmission, when received at _____ (address of issuing branch of the Bank) or on the following no. _____ (for the purposes of facsimile transmission).

This Bank Guarantee shall be governed by and construed in accordance with the laws of the Republic of India and the parties to this Bank Guarantee hereby submit to the exclusive jurisdiction of the Courts at _____ alone for the purposes of settling any disputes or differences which may arise out of or in connection with this Bank Guarantee, and for the purposes of enforcement under this Bank Guarantee.

The Bank declares that it has the power to issue the Bank Guarantee and the undersigned has full power to do so. The Bank further declares that there is no litigation or arbitration or other legal and/or administrative proceedings pending and/or threatened against the bank which could reasonably be expected to have a material adverse effect or change in Bank's ability to perform its obligations under this Guarantee.

Notwithstanding anything contained herein, our liability under this Bank Guarantee is limited to `.....(Rupees.....) and it shall remain in force

up to and including[six months after the last of completion of the following obligations: (a) the Developer has paid to Authority all the instalments of the Lease Premium as per the terms of the Development Agreement; (b) the Developer has completed the construction of the entire Project in terms of the Agreement; (c) the Completion Clearance has been issued under the Development Agreement in respect of the Commercial Development Project (as required under the terms of the Development Agreement)] and shall be extended from time to time for such period as may be desired by M/s..... (name of the Developer), on whose behalf this guarantee has been given.

IN WITNESS WHEREOF, THE BANK HAS executed this Guarantee on the day, month and year first above mentioned through its duly authorized representative.

SIGNED, SEALED AND DELIVERED

SEAL OF THE BANK

ON BEHALF OF THE BANK BY

SIGNATURE OF AUTHORISED

REPRESENTATIVE

OF

THE

BANK _____

SCHEDULE 19

PERFORMANCE GUARANTEE FOR MANDATORY PROJECT

(Under Article 10.2)

Format of Performance Guarantee for Mandatory Project³²

(To be executed on Non Judicial Stamp paper of appropriate value)

Date:

No.

To,

[insert]

[Insert Name of Authority] (Authority)

[insert address]

In consideration of [Insert Name of Authority] (hereinafter referred to as the “Authority”, which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators and assigns) having agreed to grant to _____ (the “Developer”) the right to undertake the _____ project (the “Project”) in accordance with the terms of the Letter of Award dated _____ and as a pre-condition to the execution of the Development Agreement pursuant to the Request for Proposal dated _____ issued by Authority (the “Bid Documents”), the Developer has to submit a Performance Guarantee for Mandatory Project in the form of a Bank Guarantee to Authority to secure the performance by the Developer of its obligations, in respect of the Mandatory Project under the Development Agreement to be entered into by _____.

KNOW ALL MEN by these presents that we _____ (name of bank) of _____ (city and country) having our registered office at _____ (hereinafter referred to as the “Bank”,

³² Note: This format is indicative and would need to be suitably updated/ modified depending on the specific requirements of each transaction.

which expression shall, unless repugnant to the context or meaning thereof, include its successors, administrators, executors and assigns) and having a net worth of more than _____ and wherein we have been requested by the Developer to provide the Performance Guarantee in the form of bank guarantee, we do hereby unconditionally guarantee and undertake to pay to Authority immediately on first written demand from Authority any or all money payable by the Developer to the extent of _____/- (Rupees _____ only) (the “Bank Guarantee”) as aforesaid at any time up to six months after the last of completion of the following obligations: (a) the Defects Liability Period in respect of the entire Redevelopment Project as contemplated under the Development Agreement expires; (b) the Defects Liability Period in respect of the entire Station Development Project as contemplated under the Development Agreement expires.

Any such written demand made by Authority on the Bank stating that the Developer is in default of the due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents shall be final, conclusive and binding on the Bank, as regards amount due and payable by the Bank under this Guarantee notwithstanding any difference between Authority and the Developer or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

We agree that the guarantee herein contained shall be irrevocable and shall continue to be enforceable till Authority discharges this Bank Guarantee.

This Bank Guarantee shall remain valid and in force until the expiry of six months from the date the last of the following have been fulfilled/ complied with:

- (a) the Defects Liability Period in respect of the entire Redevelopment Project as contemplated under the Development Agreement expires;
- (b) the Defects Liability Period in respect of the entire Station Development Project as contemplated under the Development Agreement expires.

The Bank Guarantee shall be a continuing irrevocable obligation.

The Authority shall be the sole judge to decide as to whether the Developer is in default of due and faithful fulfilment and compliance with the terms and conditions contained in the Bidding Documents and the decision of Authority that the Developer is in default as aforesaid shall be final and binding on us, notwithstanding any differences between the

Authority and the Developer or any dispute pending before any Court, Tribunal, Arbitrator or any other Authority.

In order to give full effect to this Guarantee, Authority shall be entitled to treat the Bank as the principal debtor. Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Bank Guarantee, to vary or to extend the terms of the Development Agreement, from time to time. Authority shall have the fullest liberty without affecting this Bank Guarantee, to postpone from time to time the exercise of any powers vested in them or of any right which they might have against the _____ (name of the Developer) and to exercise the same at any time in any manner, and either to enforce or to forbear to enforce any covenants, contained or implied, in the Bid Documents, any other course or remedy or security available to Authority.

The Bank shall not be relieved/released of its obligations under these presents by any exercise by Authority of its liberty with reference to the matters aforesaid or any of them or by reason of any other act or forbearance or other acts of omission or commission on the part of Authority or any other indulgence shown by Authority to the said Developer or by any other matter or thing whatsoever which under law would but for this provision have the effect of relieving/releasing the Bank from its such liability.

The Bank also agrees that Authority shall at its option be entitled to enforce this Bank Guarantee against the Bank as a principal debtor, in the first instance without proceeding against the Developer and notwithstanding any security or other guarantee that Authority may have in relation to the Developer's liabilities.

This Guarantee shall not be affected by any change in the constitution or winding up of the Developer or the Bank or any absorption/merger or amalgamation of the Developer or the Bank with any other Person.

Authority shall be entitled to make unlimited number of demands under this Bank Guarantee, provided that the aggregate of all sums paid shall not exceed the guaranteed amount of ` _____/- (Rupees _____ only).

Upon receipt of a demand from Authority the Bank shall make the payment of the guaranteed amount forthwith, without any proof for document, notwithstanding any dispute by the Developer, and such a demand shall be a conclusive evidence of the Bank's liability to pay Authority. The Bank Guarantee shall be a continuing irrevocable obligation.

Invocation of this Bank Guarantee by any official of Authority shall be valid and unquestionable.

The Bank shall not revoke this Guarantee during its currency except with the previous express consent of Authority in writing.

Any waivers, extensions of time or other forbearance given or variations required under the Bid Documents or any invalidity, unenforceability or illegality of the whole or any part of the Bid Documents or rights, of any Party thereto, or amendment or other modification of the Bid Documents, or any other fact, circumstance, provision of statute of law which might, entitle the Bank to be released in whole or in part from its undertaking, or makes its liability to be secondary and not primary, shall not in any way release the Bank from its obligations under this Bank Guarantee.

Any demands shall be deemed to have been duly served: if delivered by hand, when left at _____ (address of issuing branch of the Bank); and if given or made by pre-paid registered post or facsimile transmission, when received at _____ (address of issuing branch of the Bank) or on the following no. _____ (for the purposes of facsimile transmission).

This Bank Guarantee shall be governed by and construed in accordance with the laws of the Republic of India and the parties to this Bank Guarantee hereby submit to the exclusive jurisdiction of the Courts at _____ alone for the purposes of settling any disputes or differences which may arise out of or in connection with this Bank Guarantee, and for the purposes of enforcement under this Bank Guarantee.

The Bank declares that it has the power to issue the Bank Guarantee and the undersigned has full power to do so. The Bank further declares that there is no litigation or arbitration or other legal and/or administrative proceedings pending and/or threatened against the bank which could reasonably be expected to have a material adverse effect or change in Bank's ability to perform its obligations under this Guarantee.

Notwithstanding anything contained herein, our liability under this Bank Guarantee is limited to `.....(Rupees.....) and it shall remain in force up to and including[six months after the last of completion of the following obligations: (a) the Defects Liability Period in respect of the entire Redevelopment Project as contemplated under the Development Agreement expires; (b) the Defects Liability Period in respect of the entire Station Development Project as contemplated under the Development

Agreement expires] and shall be extended from time to time for such period as may be desired by M/s..... (name of the Developer), on whose behalf this guarantee has been given.

IN WITNESS WHEREOF, THE BANK HAS executed this Guarantee on the day, month and year first above mentioned through its duly authorized representative.

SIGNED, SEALED AND DELIVERED

SEAL OF THE BANK

ON BEHALF OF THE BANK BY

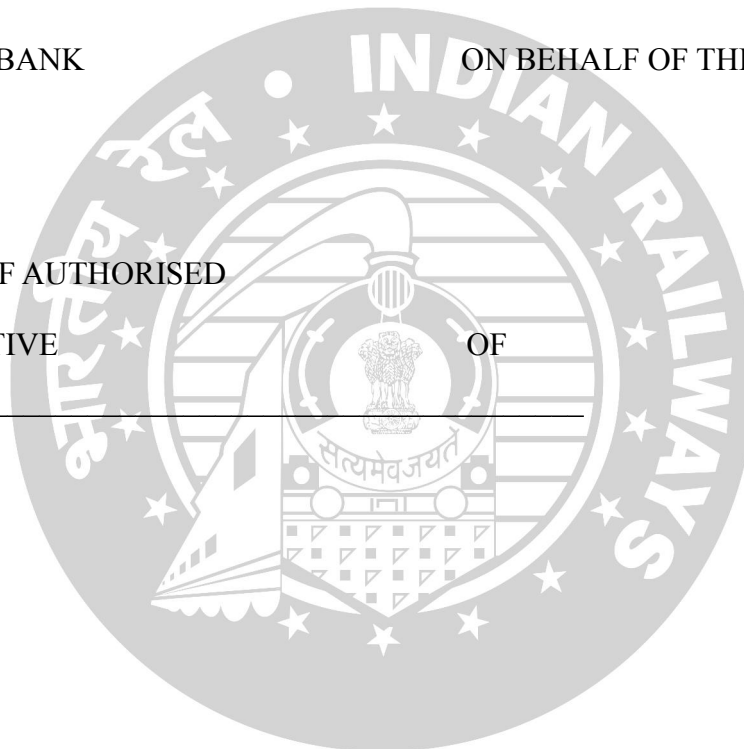
SIGNATURE OF AUTHORISED

REPRESENTATIVE

OF

THE

BANK _____



SCHEDULE 20

SUBSTITUTION AGREEMENT

(Under Article 29.2.1)

This Substitution Agreement (hereinafter referred to as “**Substitution Agreement**”) is entered into on this the [] day of [], [] at []

AMONGST

1. [Insert Name of Authority] having its registered office at [insert] (hereinafter referred to as “**Authority**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and assigns) of the **FIRST PART**; and,
2. [insert], a company incorporated under the Companies Act, 1956 as a Special Purpose Company for implementing the Project and having its registered office at [insert] (hereinafter referred to as “**Developer**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors, liquidators and permitted assigns) of the **SECOND PART**; and,
3. [insert name and particulars of Lenders’ Representative] [description about incorporation] and having its registered office at [insert], acting for and on behalf of the Lenders listed in **Schedule I** hereto as their duly authorised agent with regard to matters arising out of or in relation to the Substitution Agreement (hereinafter referred to as the “**Lenders’ Representative**”, which expression shall, unless repugnant to or inconsistent with the context or meaning thereof, mean and include its successors and substitutes) of the **THIRD PART**.

WHEREAS:

- (A) Authority has entered into a Development Agreement dated [] with the Developer (the “**Development Agreement**”), whereby Authority has granted the Developer in terms of the Development Agreement the right to undertake the Project upon the Project Land, as defined in the Development Agreement annexed hereto, as **Schedule II**.

- (B) As per the provisions of the Development Agreement, it is agreed by and between Authority and the Developer that Authority shall grant leasehold rights of the Commercial Development Assets to the Developer in accordance with the Development Agreement. The Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the respective Financing Agreements.
- (C) The Lenders have requested Authority to enter into the Substitution Agreement for securing their interests through assignment, transfer of the rights of the Developer under the Development Agreement (**‘Grant’**) and substitution of the Developer by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Development Agreement.
- (D) In order to enable implementation of the Project including its financing and construction, Authority has agreed and undertaken to transfer and assign the Grant to a Nominated Company in accordance with the terms and conditions set forth in the Substitution Agreement and the Development Agreement.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions and understandings set forth in this Substitution Agreement and other good and valuable consideration (the receipt and adequacy of which are hereby mutually acknowledged), the Parties, with the intent to be legally bound, hereby agree as follows:-

ARTICLE I

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Development Agreement” shall have the meaning ascribed to the term in the foregoing Recitals;

“Substitution Agreement” means the Substitution Agreement and any amendment thereto made in accordance with the provisions contained in the Substitution Agreement;

“Claimant” shall have the meaning ascribed to the term in Article 8.3.2 hereof;

“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 Developer for 3 (three) months consecutively;

“Lenders” means financial institutions, banks, multilateral funding agencies, and similar bodies undertaking lending business or their trustees/agents including their successors and assignees, who have agreed to guarantee or provide finance to the Developer under any of the Financing Agreements for meeting the costs of the Developer in relation to the design, development and construction of the Project;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

“Lenders’ Substitution Notice” shall have the meaning ascribed to the term in Article 3.2.3;

“Lenders’ Substitution Representation” shall have the meaning ascribed to the term in Article 3.3.2;

“Nominated Company” means a company, incorporated under the provisions of the Companies Act, 1956, selected in accordance with the provisions hereof by Authority or the Lenders’ Representative, on behalf of the Lenders, and proposed to Authority for assignment/transfer of the Grant as provided in the Substitution Agreement;

“Notice of Financial Default” shall have the meaning ascribed to the term in Article 3.2.1;

“Notice of Intent” shall have the meaning ascribed to the term in Article 8.3.2;

“Novation” shall mean the process or the act of replacing the Developer in any agreement or sub-contract in respect of the Project by another party such that the contract transferred by the novation process transfers all rights, duties and obligations from the Developer, original obligor, to the new obligor.

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

“Respondent” shall have the meaning ascribed to the term in Article 8.3.2;

“Substitution” is the process of replacement of a Nominated Company in place of the Developer by undertaking the following activities:

- (a) Grant, to the Nominated Company, the right to develop, design, finance, construct, operate and maintain the Project (including entering into sub-contracts), under and in accordance with the terms and conditions set forth in the Development Agreement, for the remainder of the Term, by the Novation of the Development Agreement in favour of the Nominated Company;
- (b) Grant, to the Nominated Company, the license lights or leasehold interest (as the case may be) over the Commercial Development Assets together with the Assets and Project Utilities (to the extent permitted under the Development Agreement) all or any singular rights, liberties, privileges, easements and appurtenances whatsoever to the Site, for the remainder of the Term, by the Novation of the Development Agreement in the event of execution of the same in favour of the Nominated Company;
- (c) Novation of the contracts and any other agreement needed to be novated for the purpose of implementing and operating the Project in accordance with the terms and conditions set forth in the Development Agreement in the event of execution of the same, in favour of the Nominated Company;
- (d) The execution of a new Substitution Agreement with the Nominated Company for the remainder of the Term on the same terms and conditions hereof;
- (e) Transfer by the Developer all its rights and obligations as provided in the Development Agreement, including possession of all Assets and Project Utilities of the Project to the Nominated Company;
- (f) Grant by Authority to the Nominated Company of all approvals, clearances and permissions within Authority’s power and necessary for implementing and operating the Project, provided duly completed application in accordance with Applicable Law is submitted to Authority; and

- (g) Transfer by the Developer all sub-contracts, Letter of Allotments and sub-lease deeds including its rights and obligations thereof to the Nominated Company.

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 the Lenders.
- 1.2.2 References to Articles are, unless stated otherwise, references to Articles of the Substitution Agreement.
- 1.2.3 The words and expressions beginning with capital letters and defined in the Substitution Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in the Substitution Agreement and not defined herein but defined in the Development Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Development Agreement.
- 1.2.4 The rules of interpretation stated in Article 1.2 of the Development Agreement shall apply, *mutatis mutandis*, to the Substitution Agreement.

ARTICLE II

ASSIGNMENT

2.1 Assignment of rights and title

The Developer hereby assigns the rights, title and interest in the Grant to, and in favour of, the Lenders' Representative pursuant to and in accordance with the provisions of the Substitution Agreement and the Development Agreement by way of security in respect of financing by the Lenders under the Financing Agreement.

ARTICLE III

SUBSTITUTION OF THE DEVELOPER

3.1 Rights of substitution

- 3.1.1 Pursuant to the rights, title and interest assigned under Article 2.1, the Lenders' Representative shall be entitled to substitute the Developer by a Nominated

Company under and in accordance with the provisions of the Substitution Agreement and the Development Agreement.

- 3.1.2 Authority hereby agrees to substitute the Developer by assignment of the Development Agreement in favour of the Nominated Company selected by the Lenders' Representative or Authority, as the case may be, in accordance with the Substitution Agreement. In the event the Nominated Company is selected by the Lenders' Representative, The Lenders' Representative has to obtain Authority's prior approval for such substitution. (For the avoidance of doubt, the Lenders or the Lenders' Representative either individually or collectively, shall not be entitled to operate as the Developer.

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 Developer (the **"Notice of Financial Default"**) along with particulars thereof, and send a copy to Authority for its information and record. A Notice of Financial Default under this Article III shall be conclusive evidence of such Financial Default and it shall be final and binding upon the Developer for the purposes of the Substitution 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 the Substitution Agreement or the Financing Agreements, substitute the Developer by a Nominated Company in accordance with the provisions of the Substitution Agreement.
- 3.2.3 At any time after the Lenders' Representative has issued a Notice of Financial Default, it may make a representation to Authority, stating that it intends to substitute the Developer by a Nominated Company (**"Lenders' Substitution Notice"**). The Lenders' Representative shall be entitled to undertake and complete the substitution of the Developer by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Development Agreement within a period of 180 (one hundred and eighty) days from the date of Lenders' Substitution Notice, and Authority shall withhold Termination due to any Developer Event of Default for the aforesaid period of 180 (one hundred and eighty) days, and the Developer shall continue to discharge its obligations thereunder for such period.

Lenders' Representative shall forthwith send a copy of the aforesaid Lenders' Substitution Notice to the Escrow Bank and to the Developer.

3.3 Substitution upon occurrence of Developer Event of Default

3.3.1 Upon occurrence of a Developer Event of Default, Authority shall, by sending a copy of the Notice of Intention to Terminate to the Lenders' Representative, inform of its intention to terminate the Development Agreement and grant 15 (fifteen) days time to the Lenders' Representative to make a representation, stating its intention to substitute the Developer by a Nominated Company.

3.3.2 In the event that the Lenders' Representative make a representation to Authority within the period of 15 (fifteen) days specified in Article 3.3.1, stating that it intends to substitute the Developer by a Nominated Company ("**Lenders' Substitution Representation**"), the Lenders' Representative shall be entitled to undertake and complete the substitution of the Developer by a Nominated Company in accordance with the provisions of the Substitution Agreement and the Development Agreement within a period of 180 (one hundred and eighty) days from the date of issue of Lenders' Substitution Representation, Authority shall withhold Termination for the aforesaid period of 180 (one hundred and eighty) days, and the Developer shall continue to discharge its obligations thereunder for such period. Lenders' Representative shall forthwith send a copy of the Lenders' Substitution Representation to the Developer and the Escrow Bank.

3.4 Procedure for substitution

3.4.1 Authority and the Developer hereby agree that on or after the date of Lenders' Substitution Notice under Article 3.2.3 and/or Lenders' Substitution Representation Article 3.3.2, as the case may be, the Lenders' Representative may, without prejudice to any of the other rights or remedies of the Lenders under the Financing Agreements, invite, negotiate and procure offers, either by public auction or through competitive tenders for the take over and transfer of the Grant to the Nominated Company upon such Nominated Company's assumption of the liabilities and obligations of the Developer towards Authority under the Development Agreement and towards the Lenders under the Financing Agreements, subject to such

Nominated Company conforming to the qualification criteria prescribed by Authority at the time of selection of the Developer.

3.4.2 The criteria for selection of the Nominated Company shall be a lump sum Substitution Premium to be paid upfront to Authority by the selected party as consideration prior to execution of any agreement for the Project. The Substitution Premium shall be in addition to the Nominated Company agreeing to bear all the liabilities of the Developer in terms of the Development Agreement, Financing Agreement, letter of allotment/sub-lease deeds and contracts with the Sub-contractors which shall include but not be limited to overdue and future payments towards taxes to be paid to the Government, repayment or refunds to third parties, instalments of Lease Premium (and interests thereof) to be paid to Authority, Annual Lease Rents to be paid to Authority, liquidated damages to be paid to Authority, payment to Sub-contractors relating to the Project, expenses incurred and claims by Authority on the Project due to the Developer's default in terms of the Development Agreement to be paid to Authority, servicing of Debt Due to the Lenders. Moreover as part of the condition of the bidding, the Nominated Company shall be required to deposit an additional minimum amount in the Escrow Account within 30 days of its appointment as the Nominated Company to clear all overdue amounts in respect of payments specified hereabove. The lump sum Substitution Premium may be either negative or positive depending on the perception of the concerned party of the rights and obligations in terms of the Development Agreement, Lease Deed and Financing Agreements.

3.4.3 Upon selection of a Nominated Company, the Lenders' Representative shall request Authority to:

- (a) transfer the Grant to the Nominated Company, on the same terms and conditions, for the remainder of the Term of the Development Agreement; and
- (b) enter into a new Substitution Agreement with the Lenders' Representative and the Nominated Company on the same terms as are contained in the Substitution Agreement.

3.4.4 If Authority has any objection to the transfer of Grant in favour of the Nominated Company in accordance with the Substitution Agreement, it shall within a period of

30 (thirty) days from the date of receipt of proposal made by the Lenders' Representative, give a reasoned decision as regards the acceptability (or objection, as the case may be) of the Nominated Company. In the event the Nominated Company is acceptable to Authority, Authority shall transfer the Grant within 15 (fifteen) days of its acceptance of the Nominated Company; provided that in the event of an objection by Authority, the Lenders' Representative may propose another Nominated Company whereupon the procedure set forth in this Article 3.4 shall be followed for substitution of such Nominated Company in place of the Developer.

Provided that it is expressly agreed between the Parties hereto that in any event the process of Substitution of the Developer shall be completed within a period of 180 (one hundred and eighty) days from the date of Lenders' Substitution Notice or Lenders' Substitution Representation.

3.5 Selection to be binding

3.5.1 The decision of Authority in selection of the Nominated Company or the approval of the Nominated Company selected by the Lenders' Representative shall be final and binding on the Developer and shall be deemed to have been made with the concurrence of the Developer. The Developer irrevocably agrees and waives any right to challenge the actions of the Lenders' Representative or the Lenders or Authority taken pursuant to the Substitution Agreement including the transfer/assignment of the Grant in favour of the Nominated Company. It is hereby acknowledged by the Parties that the rights of Authority and the Lenders' Representative are irrevocable and the Developer shall have no right or remedy to prevent, obstruct or restrain Authority or the Lenders' Representative from effecting or causing the transfer by substitution and endorsement of the Grant as requested by the Lenders' Representative or as undertaken by Authority. No consultation, concurrence or approval with or of the Developer will be required for such substitution.

3.5.2 All actions of the Lenders' Representative and/or Authority hereunder shall be deemed to be by and on behalf of, and expressly authorized by, the Lenders, and be binding upon them.

3.6 Substitution by Nominated Company in other agreements

The Developer shall ensure and procure that each agreement or contract it enters with any third party in relation to the Grant contains provisions that entitle the Nominated Company to step into such agreement, in its discretion, in place and substitution of the Developer in the event of such Nominated Company's assumption of the liabilities and obligations of the Developer under the Development Agreement. The Nominated Company shall assume the rights and obligations of the Developer in all such agreements and contracts including letter of allotments and sub-lease deeds pursuant to its receiving the Grant from Authority.

3.7 Substitution by the Nominated Company in Escrow Agreement

Pursuant to the Substitution, the Nominated Company shall substitute the Developer in the Escrow Agreement and the Developer shall have no rights whatsoever in respect of the amount outstanding in the Escrow Account at the time of the Substitution except as provided in Article V here under.

ARTICLE IV

LENDER'S REPRESENTATIVE'S FAILURE TO SUBSTITUTE

- 4.1 In the event that no company is nominated by the Lenders' Representative or the company selected by the Lenders' Representative in terms of Article 3.4 within the period of 180 (one hundred and eighty) days from the Lenders' Substitution Notice under Article 3.2.3 or the Lenders' Substitution Representation under Article 3.3.2, is not acceptable to Authority, it shall be entitled to Substitute the Developer or terminate the Development Agreement.
- 4.2 Provided that notwithstanding anything contained to the contrary herein it is expressly agreed between Authority and the Lenders' Representative that in the event Authority substitutes the Developer by a Nominated Company after the failure of the Lenders' Representative to Substitute the Developer, the Lenders shall have to forgo 15% (fifteen percent) of the debt due and the Lenders shall restructure the debt obligations of the Developer pursuant to the Financing Agreements and such Nominated Company selected by Authority shall only be liable for 85% (eighty five percent only) of the Debt Due.

ARTICLE V

COMPENSATION TO THE DEVELOPER PURSUANT TO SUBSTITUTION

- 5.1 The Developer acknowledges and agrees that subsequent to the Substitution the Developer shall suffer financial losses. The Developer hereby indemnifies the Nominated Company, the Lenders' Representative and Authority from any such losses due to the Substitution. Based on the amount of Substitution Premium offered by the selected party in terms of the Article 3.4.2, the Developer shall be entitled to the payment described in this Article V as compensation towards their Substitution only if the Nominated Company has paid a positive Substitution Premium and deposited the required minimum amount in the Escrow Account toward the overdue payment liabilities specified in Article 3.4.2 hereabove.
- 5.2 If the Substitution Premium paid by the Nominated Company is positive, the Developer shall be entitled to the full amount of Substitution Premium subject to such payment not exceeding the 85% (eighty five percent) of the total amount of Equity and Subordinated Debt due as on the date of the Termination Notice by the Developer on the Project through the Escrow Account. It is clarified that the Developer shall not be entitled to any return on Equity.
- 5.3 If the Substitution Premium paid by the Nominated Company is more than the maximum entitlements specified in the Development Agreement, the remaining amount shall be distributed as following:
- (i) if the Substitution is done by the Lenders' Representative the remaining amount shall be shared equally between Lenders and Authority;
 - (ii) if the Substitution is done by Authority, the entire remaining amount shall be paid to Authority.
- 5.4 If the Substitution Premium paid by the Nominated Company is less than the maximum entitlement of the Developer in terms of the Development Agreement, the Developer shall be entitled to only the Substitution Premium paid by the Nominated Company.
- 5.5 An Independent Auditor shall be appointed by Authority or the Lender, as the case may be, for audit of the accounts of the Developer for arriving at the payments due

for refund to the Developer as above. The cost of the independent auditor shall be deducted from the amount due for refund to the Developer in terms of this Article V.

ARTICLE VI

DURATION OF THE AGREEMENT

6.1 Duration of the Substitution Agreement

The Substitution Agreement shall come into force from the date hereof and shall expire with the Expiry of the Development Agreement. However the rights and obligations of the Lenders shall cease to exist on the occurrence of the following events, whichever is earlier:

- (i) termination of the Financing Agreements; or
- (ii) no sum remains to be advanced, or is outstanding to the Lenders, under the Financing Agreements; or
- (iii) expiry of the Term of the Development Agreement.

6.2 Substitution by Authority

Authority's right of Substitution of the Developer through the Substitution Agreement shall continue till the Expiry of the Development Agreement even after Lenders cease to exist as Party to the Substitution Agreement in terms of the Article 6.1 hereabove.

ARTICLE VII

INDEMNITY

7.1 General indemnity

- 7.1.1 The Developer hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold Authority and the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Developer of any of its obligations under the Substitution Agreement or the Development Agreement on account of failure of the Developer to comply with Applicable Laws and Applicable Permits.

- 7.1.2 Authority hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold the Lenders' Representative harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of Authority to fulfil any of its material obligations under the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their functions by Authority, its officers, servants and agents.
- 7.1.3 The Lenders' Representative hereby indemnifies and agrees and undertakes to, at all times, indemnify, defend and hold Authority and the Developer harmless against any and all proceedings, actions and third party claims or demands for any loss, damage, cost and expense arising out of failure of the Lenders' Representative to fulfil its obligations under the Substitution Agreement, materially and adversely affecting the performance of the Developer's obligations or Authority's obligation under the Development Agreement or the Substitution Agreement, other than any loss, damage, cost and expense, arising out of lawful acts done in discharge of their 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 claims or demands from a third party in respect of which it is entitled to the benefit of an indemnity under Article 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/ or shall not settle or pay the claim/ demand 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 at its (Indemnifying Party's) risk, costs and expense. 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.

ARTICLE VIII

DISPUTE RESOLUTION

8.1 Disputes - Amicable Settlement

The Parties shall use their respective reasonable endeavours to settle any Dispute amicably. If a Dispute is not resolved within sixty (60) days after written notice of a Dispute by one Party to the other Party then the provisions of Article 8.2 shall apply.

8.2 Dispute Resolution

8.2.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to the Substitution 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 Article 8.3.

8.2.2 The Parties agree to use their best efforts for resolving all the Disputes arising under or in respect of the Substitution 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.

8.3 Arbitration

8.3.1 Any Dispute which is not resolved amicably by conciliation, as provided in Article 8.2, shall be finally decided by reference to arbitration by an **Arbitral Tribunal** appointed in accordance with Article 8.3.2. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 and rules made thereunder (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. The governing law of the arbitration shall be the laws of India. The venue of such arbitration shall be at _____, and the language of arbitration proceedings shall be English.

8.3.2 A notice of the intent (“**Notice of Intent**”) to refer the dispute to arbitration may be given by one or more Parties (the “**Claimant(s)**”) to the other Parties (the

“Respondent(s)”). There shall be an Arbitral Tribunal consisting of three (3) arbitrators. Each Party shall be entitled to appoint one arbitrator to the Arbitral Tribunal.

8.3.3 The Arbitral Tribunal shall make a reasoned award (the **“Award”**). Any Award made in any arbitration held pursuant to this Article VIII shall be final and binding on the Claimant(s) and Respondent(s) as from the date it is made, and the Developer, Lenders’ Representative and Authority agree and undertake to obey and implement such Award without delay.

8.3.4 The Developer, Lenders’ Representative and Authority agree that an Award may be enforced against the Developer and/or Lenders’ Representative and/or Authority, as the case may be, and their respective assets wherever situated.

8.3.5 This Article VIII shall survive the termination or expiry of the Substitution Agreement.

8.4 Continued performance

While any Dispute under the Substitution Agreement is pending, including the commencement and pendency of any Dispute referred to arbitration, the Parties shall continue to perform all of their respective obligations under the Substitution Agreement without prejudice to the final determination in accordance with the provisions under this Article VIII.

Notwithstanding anything contrary contained herein, all obligations of Authority under this Substitution Agreement shall automatically come to an end upon the expiry or termination of the Development Agreement and/or Substitution Agreement and Authority shall not be obliged to perform such obligation during the pendency of any post-expiry or post-termination Dispute, whether referred to arbitration or not.

ARTICLE IX

MISCELLANEOUS PROVISIONS

9.1 Governing law and jurisdiction

The Substitution Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and subject to Article IX and Article VIII, the

Courts at _____ alone shall have exclusive jurisdiction over all matters arising out of or relating to the Substitution Agreement.

9.2 Priority of agreements

In the event of any conflict between the Development Agreement and the Substitution Agreement, the provisions contained in the Development Agreement shall prevail over the Substitution Agreement.

9.3 Alteration of terms

All additions, amendments, modifications and variations to the Substitution Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

9.4 Waiver

9.4.1 Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under the Substitution 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 the Substitution 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 the Substitution Agreement in any manner.

9.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of the Substitution 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.

9.5 No third party beneficiaries

The Substitution Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

9.6 Survival

9.6.1 Termination of the Substitution 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 the Substitution 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 Severability

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

9.8 Successors and assigns

The Substitution Agreement shall be binding on and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

9.9 Notices

All notices, requests, demands or other communication required or permitted to be given under this Substitution Agreement and the provisions contained herein shall be written in English and shall be deemed to be duly sent by registered post, or transmitted by facsimile transmission or email to the other Parties at the address indicated below:

- (i) In the case of Authority, to: Attention: []

Add:

E mail: []

Facsimile: []

NOTE: Authority to please fill in.

- (ii) In the case of notices to Developer, to: Attention: []

Add:

E mail: []

Facsimile: []

NOTE: Authority to please fill in.

- (iii) In the case of notices to Lenders' Representative, to: Attention: []

Add:

E mail: []

Facsimile: []

NOTE: Authority to please fill in.

or at such other address as the Party to whom such notices, requests, demands or other communication is to be given have last notified the Party giving the same in the manner provided in this Article, but no such change of address shall be deemed to have been given until it is actually received by the Party sought to be charged with the knowledge of its contents. Any notice, request, demand or other communication delivered to the Party to whom it is addressed as provided in this Article 9.9 shall be deemed (unless there is evidence that it has been received earlier) to have been given and received, if:

- (i) Sent by registered post , 3 (Three) Business Days after posting it; and
- (ii) Sent by facsimile or e-mail, on the next Business Day, when confirmation of its transmission has been recorded by the sender's facsimile machine or e-mail account.

9.10 Language

All notices, certificates, correspondence and proceedings under or in connection with the Substitution Agreement shall be in English.

9.11 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.

9.12 Original Document

The Substitution Agreement may be executed in three counterparts, each of which when executed and delivered shall constitute an original of the Substitution Agreement.

IN WITNESS WHEREOF the Substitution Agreement has been executed by the duly authorized representatives of the Parties hereto at the place and on the date first above written.

SIGNED AND DELIVERED FOR AND ON BEHALF OF [*Insert Name of Authority*]

BY: _____

Name: _____

Title: _____

SIGNED AND DELIVERED FOR AND BEHALF OF [*insert name of Developer*] DULY
AUTHORISED VIDE RESOLUTION OF THE BOARD OF DIRECTORS

BY: _____

Name: _____

Title: _____

**SIGNED AND DELIVERED FOR AND ON BEHALF OF LENDERS’
REPRESENTATIVE**

BY: _____

Name: _____

Title _____

Witnesses

1. Name: _____

Address: _____

2. Name: _____

Address: _____

Schedule I

Details of Lenders

<i>S. No.</i>	<i>Name</i>	<i>Address</i>

Schedule II

Development Agreement

[Note: Copy of Development Agreement to be annexed]

SCHEDULE 21

STATION FACILITY MANAGEMENT AGREEMENT

(Under Article 25.1.1)

Format of Station Facility Management Agreement to be attached



SCHEDULE 22³³

HANDOVER PROTOCOL

(Under Article 11.1)

1. Station Development Land shall be handed over in following phases

<i>Phase</i>	<i>Zone (As per Master Plan)</i>	<i>Area to be handed over (sqm)</i>	<i>%Area to be handed over</i>	<i>Date of handing Over</i>	<i>Remarks</i>

2. Redevelopment Land shall be handed over in following phases

<i>Phase</i>	<i>Zone (As per Master Plan)</i>	<i>Area to be handed over (sqm)</i>	<i>% Area to be handed over</i>	<i>Date of handing Over</i>	<i>Remarks</i>

3. Site shall be handed over in following phases

<i>Phase</i>	<i>Zone (As per Master Plan)</i>	<i>% Area to be handed over</i>	<i>Date of handing Over</i>	<i>Remarks</i>

³³ To be filled from DPR.

4. Pre-requisites to be complied by Developer prior to handing over of sites in the phases set out in (1) above:

<i>Phase</i>	<i>Type of facility to be relocated</i>	<i>Land Area (sqm)</i>	<i>BUA (sqm)</i>	<i>Relocation Location</i>	<i>Date of arranging the facility</i>	<i>Remarks</i>

5. List of Inventory and condition of the sites:

<i>S. No.</i>	<i>Items Description</i>	<i>Qty/ area (sqm)</i>	<i>BUA (sqm)</i>	<i>Location</i>	<i>Remarks on the condition of the handed over items</i>

[Note: To be prepared separately for each zone/ component of Project Land]

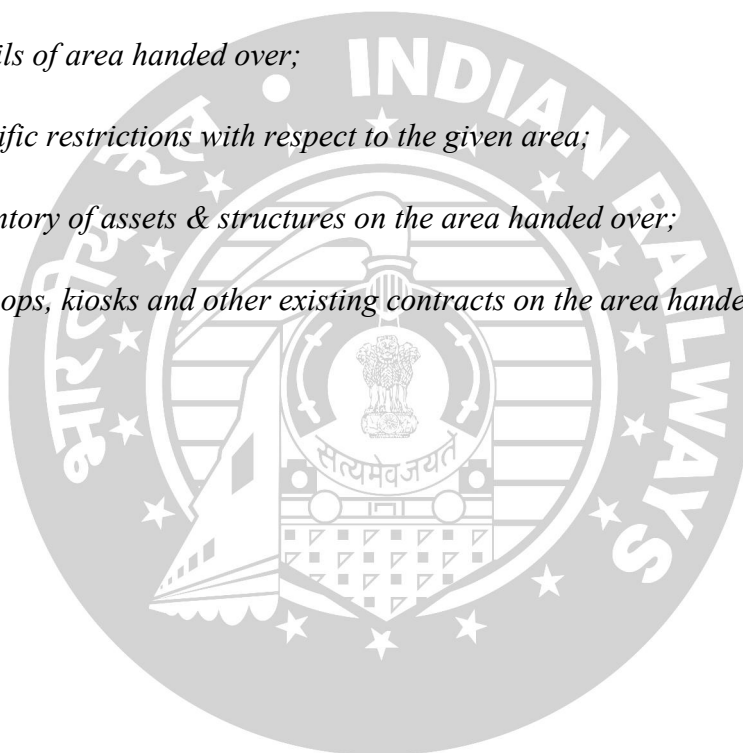
SCHEDULE 23

HANDOVER NOTE

(Under Article 11.1)

[Note: Detailed Terms and Conditions (in the form of a jointly signed document) of the hand-over for each Project to be included herein. These may, depending on the specific Project, include:

- *Date of the hand-over;*
- *The details of area handed over;*
- *Any specific restrictions with respect to the given area;*
- *The inventory of assets & structures on the area handed over;*
- *List of shops, kiosks and other existing contracts on the area handed over;]*



SCHEDULE 24³⁴

PROJECT WORK, SAFETY AND ACCESS REQUIREMENTS

(Under Articles 5.3 and 24.1)

1 Guiding principles

- 1.1 Safety Requirements aim at reduction in injuries, loss of life and damage to property resulting from accidents on the Project Land, irrespective of the person(s) at fault.
- 1.2 Safety Requirements apply to all phases of construction, operation and maintenance with emphasis on identification of factors associated with accidents, consideration of the same, and implementation of appropriate remedial measures.
- 1.3 Safety Requirements include measures associated with safe movement, safety management, safety equipment, fire safety, enforcement and emergency response, with particular reference to the Safety Guidelines specified in the Annex of this Schedule 24.

2 Obligations of the Developer

The Developer shall abide by the following insofar as they relate to safety of the Affected Parties:

- (a) Applicable Laws and Applicable Permits;
 - (b) Manual for Safety, issued by the Authority and/or Railway;
 - (c) provisions of the Agreement; and
 - (d) relevant Standards/Guidelines contained in internationally accepted codes;
- and
- (e) Good Industry Practice.

3 Appointment of Safety Consultant

³⁴ To be filled from DPR.

For carrying out safety audit of the Project Land under and in accordance with Part B of this Schedule 24, the Authority shall appoint from time to time, one or more qualified firms or organisations as its consultants (the “Safety Consultant”). The Safety Consultant shall employ a team comprising, without limitation, one rail safety expert and one traffic planner to undertake safety audit of the Project Land.

4 Safety measures during Development Period

- 4.1 No later than 90 (ninety) days from the date of the Agreement, the Authority shall appoint a Safety Consultant for carrying out safety audit at the design stage of the Project
- 4.2 The Developer shall provide to the Safety Consultant, in four copies, the relevant drawings containing the design details that have a bearing on safety of Affected Parties (the “**Safety Drawings**”). Such design details shall include horizontal and vertical alignments; sightlines; layouts of elevated structures and Project Land 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 PMC who shall record its comments, if any, and forward one copy each to the Authority and the Developer.
- 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 Project. The safety audit shall be completed in a period of three months and a report thereof (the “**Safety Report**”) shall be submitted to the Authority, in five copies. One copy each of the Safety Report shall be forwarded by the Authority to the Developer and the PMC forthwith.
- 4.4 The Developer shall endeavour to incorporate the recommendations of the Safety Report in the design of the Project Land, as may reasonably be required in accordance with Applicable Laws, Applicable Permits, manuals and guidelines of the Railway, Specifications and Good Industry Practice, If the Developer 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 Specifications, the Developer shall make a report thereon and seek the instructions of the Authority.

- 4.5 Without prejudice to the provisions of Paragraph 4, the Developer and the PMC 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 alongwith the Safety Report and by notice direct the Developer to carry out any or all of the recommendations contained therein with such modifications as the Authority may specify;

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 Project Land 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 Project Land, 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 Part B of this Schedule 24.

- 5.3 The Developer shall make adequate arrangements during the Construction Period for the safety of workers and Affected Parties in accordance with Applicable Laws and Good Industry Practice for safety in construction zones and notify the Authority and the PMC about such arrangements.

6 Safety measures during Operation Period

- 6.1 The Developer shall develop, implement and administer a surveillance and safety programme for Affected Parties, including correction of safety violations and

deficiencies and all other actions necessary to provide a safe environment in accordance with the Agreement.

- 6.2 The Developer shall establish a Station Safety Management Unit (the “SSMU”) to be functional on and after Completion Date, and designate one of its officers to be in-charge of the SSMU. Such officer shall have specialist knowledge and training in rail system safety by having attended a course conducted by a reputed organisation on the subject.
- 6.3 The Developer shall keep a copy of every FIR recorded by the Police with respect to any accident occurring on the Project Land. In addition, the Developer 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 and/or Railway for this purpose. The Developer 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 Developer shall submit to the Authority before the 31 (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 Developer pursuant to the provisions of Paragraph 6.1 of Part B of this Schedule 24 for averting or minimizing 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 Project Land. The Safety Consultant shall complete the safety audit within a period of 1 (one) month and submit a Safety Report recommending specific improvements, if any, required to be made in the Project Land. 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 Part B of this Schedule 24.
7. It is clarified that the requirements of this Schedule shall be applicable to the Developer, till such time as the Project or the relevant part thereof is not handed over

to Authority (and/ or its nominee, including the Railway) in accordance with the terms of the Agreement.

8. Hoarding for site Fencing
9. Security Guards
10. Traffic Management & Traffic Guards

8. In this Schedule, the term “Affected Parties”, shall include all Persons or invitees entitled to enter or be on the Project Land (including, without limitation officials, employees, personnel, agents, representatives, of the Developer and its Sub-Contractors) and all users thereof.

Annex
(Schedule 24)
Safety Guidelines³⁵

1 Safe movement

In the design, construction and operation of Project Land, particular care shall be taken to ensure safety of Affected Parties in entry and exit; while and waiting, or using any part of Project. This shall include facilities for safe and efficient evacuation in case of emergency.

2 System integrity

In the design of the Project Utilities, including power supply, circuits and equipments, particular care shall be taken to reduce the likely incidence of failure.

3 Restoration of service

³⁵ Note: Schedule to be appropriately prepared keeping in mind the considerations of the relevant project

The Project Land 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 Developer 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 PMC within 15 (fifteen) days of the close of every quarter.

5 Safety equipment

The following equipment shall be provided at the Project Land:

- (a) Fire extinguishers and fire alarms at the appropriate locations;
- (b)fire extinguishers in
- (c)stretchers andstandard first aid boxes; and
- (d) such other equipment as may be required in conformity with Good Industry Practice.

6 Emergency

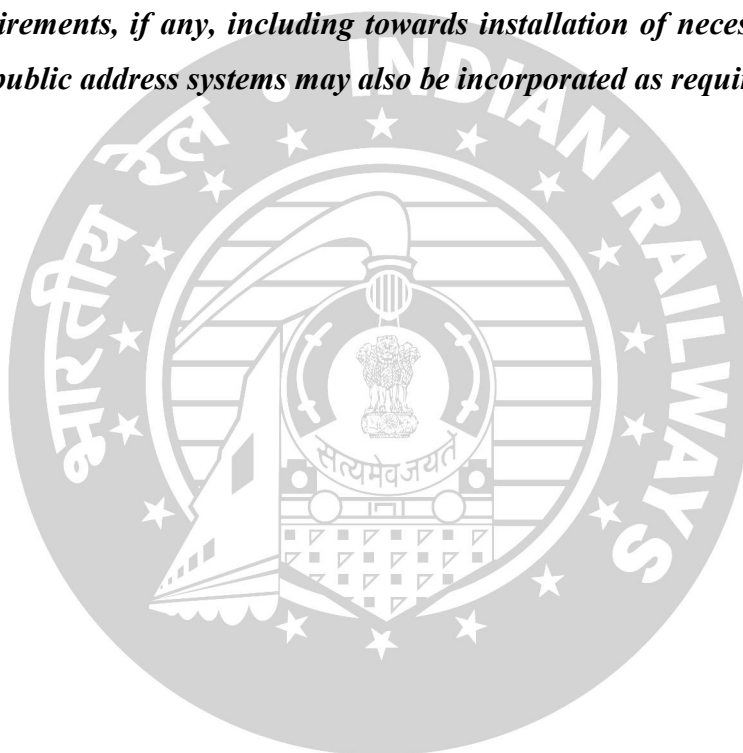
A set of emergency procedures shall be formulated to deal with different emergency situations and the operations staff shall be trained to respond appropriately during emergency through periodic simulated exercises as laid down in a disaster management manual to be prepared and published by the Developer prior to Completion Date.

7 Fire safety

- 7.1 To prevent fire in the passenger areas, the Developer 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 from theshould be accessible without any obstructions and the exit doors should be kept locked in the ordinary course. The exit doors shall be easy to open in case of emergency.
- 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 Article 7.3, the possibility of poor visibility due to smoke shall be duly taken into account. All notices and signages shall be uniform.

Note: This schedule is indicative and will need to be customized for each project. Additional requirements, if any, including towards installation of necessary information systems and/or public address systems may also be incorporated as required.



SCHEDULE 25

BLOCK WORKS³⁶

(Under Article 14.3)

[Note: Indicative table provided. This to list the details of permitted Block Works and process to be followed and approvals required to be obtained by the Developer from Authority and specification if any]

Part – A:

S.No.	Activities	Line	Duration of Block Permitted		Number of Blocks		Cost for Block Hours over and above hours permitted under Column (4) and (5) (₹. / per hour/minute)	Liquidated Damages for block works without permission (₹ / hour / minutes)	Escalated Liquidated Damages for not completing the work within permitted Block Work (₹ / hour / minutes)
			Traffic	Power	Traffic	Power			
(1)	(2)	(3)	(4)		(5)		(6)	(7)	(8)
	Total								

Part B: Format of Application

Part – C Specifications of Block Works

³⁶ To be filled from PIM or by Railway.

SCHEDULE 26³⁷

ESTIMATED PROJECT COST

(Under Article 1.1.57, 1.1.58, 1.1.59 and 1.1.60)

(A) Estimated Cost of Mandatory Project

1. Estimated cost of the Station Development Project [Rupees ____]
2. Estimated cost of the Redevelopment Project [Rupees ____]

(B) Estimated Cost of Commercial Development Project

1. Cost of construction of Built Up Area in the Commercial Development Project:
Rupees [____]/Per sq.³⁸

The Estimated Cost of Commercial Development Project shall be determined on the basis of the multiplication of the aforesaid amount with the cumulative Built Up Area for the Commercial Development Project in respect of which the Completion Clearance has been issued.

2. Assumption of rates of taxes³⁹
 - i. Service Tax [‘....]
 - ii. VAT [‘....]
 - iii. Corporate Tax [‘....]

³⁷ To be filled from DPR.

³⁸ Note: This has an implication on the Termination Payments and should be suitably assessed for each Project.

³⁹ Note: Any other taxes, to be specifically mentioned in the above format.

SCHEDULE 27⁴⁰

QUALITY ASSURANCE

(Under Article 24.1.2)

1. General

The Developer shall implement a Project Quality Management Plan in accordance with ISO-9001 “Quality System – Model for Quality Assurance in Design/Development, Production, installation and Servicing” to ensure that all materials, workmanship, plant and equipment supplied and work done under the Agreement meets the requirements of the Agreement. This plan shall apply to all activities related to the quality of items, including designing, purchasing, inspecting, handling, assembling, testing, storing, and shipping of materials and equipment and different elements of construction work and installations of system components.

The Quality Plan to be prepared by the Developer and submitted to the PMC shall follow the requirements of ISO 9000 and address each element therein.

2. Quality Assurance Management Plan

The Project Quality Management Plan (PQMP) shall as a minimum address the quality system elements as required by ISO 9001, generally noting the applicability to the Developer’s works programme for the Project. Procedures or Quality Plans to be prepared by others (Suppliers, Sub-Contractors, Sub consultants) and their incorporation in the overall PQMP shall be identified.

The Developer shall provide and maintain a Quality Assurance Plan (QA Plan) to regulate methods, procedures, and processes to ensure compliance with the Agreement requirements. The QA Plan, including Quality Assurance (QA) written procedures, shall be submitted to the PMC for his review.

⁴⁰ To be filled from DPR.

Adequate records shall be maintained in a readily retrievable manner to provide documented evidence of quality monitoring and accountability. These records shall be available to Authority at all times during the Term of the Agreement and during the Defects Liability Period and for a five year period thereafter.

The QA Plan shall identify:

- Design Process: that control, check and verify the accuracy, completeness and integration of the design shall be performed by certified personnel and in accordance with documented procedure that have the written consent of the PMC.
- Special Processes: that control or verify quality shall be performed by certified personnel and in accordance with documented procedures that have the written consent of the PMC;
- Inspection and Test: Inspection and testing instructions shall provide for reporting non Conformances or questionable conditions to the PMC; Inspection shall Occur at appropriate points in the installation sequence to ensure compliance with drawings, test specifications, process specifications, and quality standards. The PMC shall designate, if necessary, inspection hold points into installation or inspection planning procedures;
- Receiving Inspection: These procedures shall be used to preclude the use of nonconforming materials and to ensure that only correct and accepted items are used and installed;
- Identification and Inspection Status: a system for identifying the progressive inspection status of equipment, materials, components, subassemblies, and assemblies as to their acceptance, rejection, or non-inspection shall be maintained;
- Identification and control of Items: an item identification and traceability control shall be provided;
- Handling, Storage, and Delivery: provide for adequate work, surveillance and inspection instructions.

The Plan shall ensure that conditions adverse to quality such as failures, malfunctions, deficiencies, deviations, and defects in materials and equipment shall be promptly identified and corrected.

The Plan shall provide for establishing, and maintaining an effective and positive system for controlling non-conforming material including procedures for the identification, segregation, and disposal of all non-conforming material. Dispositions for the use or repair of non-conforming materials shall require the PMC consent.

3. Plan Implementation and Verification

The Plan shall clearly define the QA organisation. Management responsibility for the QA shall be set forth on the Developer's policy and organisation chart. The Plan shall define the requirements for QA personnel, their skills and training. Records of personnel certifications shall be maintained and monitored by the QA personnel. These records shall be made available to the PMC for review, upon request.

The QA operations shall be subject to the PMC, Authority or Authority's authorised representative's verification at any time, including: surveillance of the operations to determine that practices, methods and procedures of the plan are being properly applied; inspection to measure quality of items to be offered for acceptance; and audits to ensure compliance with the Agreement documents.

The Developer's Quality Audit Schedule shall be submitted to the PMC for consent every three months or more frequently as required.

The results of Quality Audits shall be summarised in the Developer's monthly reports.

The Developer shall provide all necessary access, assistance and facilities to enable the PMC to carry out on-site and off-site surveillance of Quality Assurance Audits to verify that the quality system which has the consent of the PMC is being implemented fully and properly.

SCHEDULE 28⁴¹

DESIGN REQUIREMENTS

(Under Article 16)

[Note: To cover mechanism of preparation of Detailed Design & Drawings for the Mandatory Project. To be inserted by Authority in consultation with the technical consultants for the Project]

1. Requirements during the design phase

The principal requirements of the design phase are the production of the preliminary design, the definitive design and the construction reference drawings in respect of the Mandatory Project consisting of the following:

- (a) *Preliminary design*: The preliminary design shall be based on the Drawings attached hereto as **Schedule 11** (*Drawings For Mandatory Project*), and shall provide initial design documents for review, and shall be sufficiently detailed to show that element of the design and documents required for the preparation of the definitive design. It shall also include:
- The QA Plan for the design of the Mandatory Project;
 - A review of the standards and specifications attached to the Agreement, including specifically those set out in **Schedule 9** (*Standards and Specifications*);
 - Submission of the design manuals, proposed design software;
 - Preliminary maintenance analysis;
 - Submission of specifications proposed for the works;
 - Identification of design codes and standards;
 - The CAD procedures;
 - The preliminary station sizing, including main structural components;

⁴¹ To be filled from DPR.

- The preliminary construction methodology;
- The preliminary traffic management plan;
- The preliminary passenger movement plan for various phases of the construction;
- The utility diversion plan;
- The preliminary architectural layouts and main materials;
- Proposed site surveys and other field surveys;
- The working plan under railway operations, including requirement for traffic and power blocks (and other Block Works);

(b) *Definitive design*: The definitive design submission shall be a coherent and complete set of documents, properly consolidated and indexed and shall fully describe the Mandatory Project. In particular, and where appropriate, it shall define:

- The dimensions of all major features, structural elements and members;
- All materials;
- Potential forces and movements due to all possible loadings and actions on the structures, and their accommodation;
- The layout and typical details of reinforcement in structural concrete members;
- Standard details;
- Details for Project Utilities and Project Facilities (as required to be provided under the Agreement) and their interaction with the structures;
- Erection methods;
- Design commentary about use of pre-fabricated and pre-cast elements for minimising Block Works;
- Utilities to be diverted/ supported;
- Proposed methods for predicting vibrations and ground movements due to train operations;
- Details of traffic or other civic services affected;

- Drawings showing the general arrangements, architectural elevations, perspectives and landscaping; Structural elements layout; Structural and surface drainage; Passenger access pathways and temporary road works; pumping systems, fire detections and alarm and fire fighting systems; station ventilation and air-conditioning; electrical plant room such as UPS, DG sets; existing utilities and proposed Project Utilities

(c) *Construction reference drawing*: The construction reference drawings (“**CRD**”) shall be derived directly from the definitive design and shall detail and illustrate in full, the Mandatory Project. The construction reference drawing shall form a part of the working drawings to be used for construction purposes. Prior to any submission of the construction reference drawing, the Developer shall prepare a full list of the construction reference drawings, in order to demonstrate to the satisfaction of the PMC that such construction reference drawings shall be sufficient in extent to cover the construction of the whole of the Mandatory Project. Unless otherwise required by the PMC, the construction reference need not include bar bending schedules, fabrication or shop drawings as well as other schedules and erection drawings which are to be provided by the Developer during the construction phase.

(d) *Proof checking of design from recognized/approved institutes*: The drawings for Mandatory Project, including its structural design, shall be proof checked by the Developer from a recognized / approved institutes before submission to the Authority for approval. The Developer shall submit a list (not less than three) of recognised / approved institutes and out of which the Nodal Officer / Authority shall select the institute(s) for proof checking of the design. The cost of proof checking of the design shall be borne by the Developer. In case the Nodal Officer / Authority needs to have discussions before approval of the design, the Developer shall attend to the office of Nodal Officer alongwith the experts of the said recognised / approved

institutes who has dealt with the proof checking of the design of the Mandatory Project.

2. *Requirements during construction phase*

On the issue of a notice by the PMC in respect of the construction reference drawings, the Developer shall produce the proposed working drawings. These shall either be identical to the CRD, or shall be further drawings developed in accordance with the CRD, e.g. site sketches, bar bending schedules, bar reference drawings, fabrication and shop drawings, construction erection sequences and the like. Prior to submission of the proposed working drawings, the Developer shall endorse the appropriate original paper drawings as 'good for construction'.

If the PMC so requires, the endorsed original shall be submitted to the PMC, who shall if it has no objection to the contents of the submission, further endorse the original, by stating that it has no-objection to the proposed working drawings.

On the endorsement by the PMC, the said originals shall forthwith be returned to the developer as the approved working drawings. Only the approved working drawings or those that the PMC has expressly stated as not requiring its approval shall be issued to the site for construction. The construction of the Mandatory Project shall be strictly in accordance with these working drawings.

SCHEDULE 29⁴²

APPLICABLE PERMITS⁴³

(Under Article 1.1.4)

Schedule 29A Applicable Permits to be obtained by the Developer

The Developer has to take permissions/approval as per the existing applicable law for the project;

1. Permission of State Government for extraction of earth, boulders from quarry
2. Permission of Pollution Control board for installation of crusher, concrete batching plant, Bitumen/Asphalt Hot mix plant etc.,
3. Permission of the State Government for drawing water from Underground/ River/reservoir; P
4. Environment Clearances (EAC/SIAC); E
5. Clearance of Pollution Control board for installation of diesel generator sets;
6. Fire safety clearance from fire Authority;
7. Forest clearance for cutting trees;
8. Labour officer for labour licence
9. Taxation Department for VAT/PAN/TAN;

The aforesaid list is illustrative, and the Developer is required to obtain all other Applicable Permits as required under any Applicable Law.

Schedule 29 B Approvals to be obtained by Authority

[Note: This is to list out the applicable permits and approvals required to be obtained by Authority]

⁴² To be filled from DPR.

⁴³ Note: The aforesaid list may be expanded to cover any other applicable permits.

SCHEDULE 30⁴⁴

PANEL OF CHARTERED ACCOUNTANTS

(Under Article 38.3.2 (c))

[**Note:** List of Chartered Accountants to be provided]



⁴⁴ To be filled from DPR.

SCHEDULE 31

USER CHARTER

(Under Article 25.1.2 (h))

Refer to relevant Schedule of Station Facility Management Agreement



SCHEDULE 32⁴⁵

DEVELOPMENT CONTROL NORMS / BUILDING BYELAWS FOR THE PROJECT

The Project shall comply with the building bye-laws and development control norms:

[Note: List the Applicable Building Bye Laws / Development Control Norms identified in respect of the Project]



⁴⁵ To be filled from DPR.

SCHEDULE 33⁴⁶

TESTS

(Under Article 21.1.4)

TEST FOR SAFETY CERTIFICATION

1. Pre acceptance tests for all the permanent works
2. CRS Inspection for acceptance of the station area train operation
3. During the course of construction as per the approved quality manual based on the Railway works manuals.
4. Independent tests by the PMC
5. Independent test from outside agency like Government Engineering Institutes or Government laboratories.
6. Any other test deemed necessary specific to the project shall be mentioned in this schedule.

[Note: Schedule to provide the details of the Schedule for Tests, Applicable Tests, and the relevant agency for such tests.]

⁴⁶ To be filled from DPR.

SCHEDULE 34⁴⁷

PERMISSIBLE LICENCES IN STATION AREA

(Under Article 25.1.2)

[Note: List of permissible activities to be inserted depending on the specifics of the Station involved]



⁴⁷ To be filled from DPR.

SCHEDULE 35

VESTING CERTIFICATE

(Under Article 39.7)

1. The Nodal Officer on behalf of the [insert name of Authority] refers to the Development Agreement dated _____ (the “**Agreement**”) between Authority and _____ for the _____ Project (the “**Project**”).
2. The Nodal Officer on behalf of Authority hereby acknowledges compliance and fulfilment by the Developer of the vesting requirements as set forth in Article 39 of the Agreement on the basis that upon the issuance of this Vesting Certificate, Authority shall be deemed to have acquired, and all rights, title and interest of the Developer in or about the Assets, shall be deemed to have vested unto Authority, free from any Encumbrances, charges or lien, 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 any of the obligations of the Developer under the Agreement.

Signed this _____ day of _____

Agreed, Accepted & Signed For an on behalf of the Developer by: _____	Agreed, Accepted & Signed For an on behalf of Authority by: _____
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SCHEDULE 36

NO-OBJECTION CERTIFICATE (NOC) FROM PMC

[Note: To be enumerated for each Project]

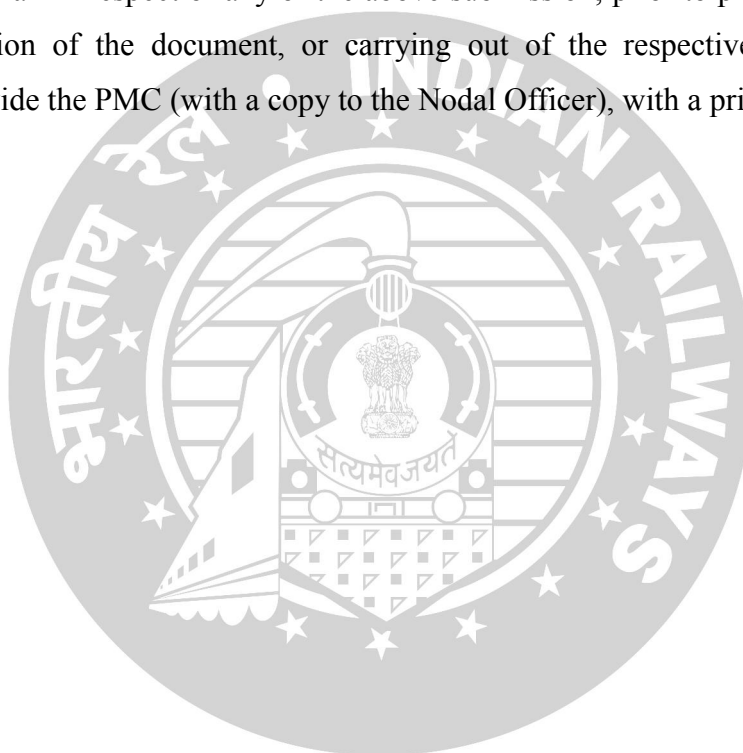
1. The Developer shall submit documents and obtain NOC/ NOC endorsement / approval from the PMC in respect of the following, before proceeding with the implementation of the document, or carrying out of the respective activity for the Project:
 - (a) Eligibility criteria for (I) Project Design Consultant (PDC), (II) principal Sub-Contractor (PSC), (III) other design consultants (ODC) for Provisional Sum Items, (IV) any other Sub-Contractor (OSC) for Mandatory Project, provided that the estimated value of such Sub-Contract is greater than ` Ten Crore.
 - (b) Preliminary design submission;
 - (c) Definitive design submission;
 - (d) Construction reference design submission;
 - (e) Working drawing submission;
 - (f) Project Quality Management Plan (PQMP);
 - (g) All management procedures (MP) under the PQMP;
 - (h) All method statements (MS);
 - (i) All work procedures (WP);
 - (j) All inspection and testing procedures (ITP);
 - (k)

[Note: To be elaborated, amended or modified as required]

2. On receipt of each submission in respect of items enumerated in paragraph 1 above, from the Developer the PMC shall examine it within a maximum period of 15 days, and either issue the NOC (if found in order), or comments enumerating deficiencies/ discrepancies in it. If the submission is returned by the PMC with comments, the Developer shall amend/ modify the submission in order to address such comments

appropriately and resubmit to the PMC, who shall again examine the resubmitted documents within a period of 7 days, for checking the compliance with its earlier observations and issue the NOC if found in order, or return it with comments if the earlier comments are not appropriately addressed, or if there is any new comment on the amendments carried out by the Developer. The process shall be repeated until such time as the PMC issues the NOC.

3. In the event that the PMC fails to respond within the time limits specified in paragraph 2 above, the PMC shall be deemed to have issued the NOC in respect of the relevant submission, on the terms set out in the relevant submission. Provided however, the Developer, shall in respect of any of the above submission, prior to proceeding with the implementation of the document, or carrying out of the respective activity for the Project, provide the PMC (with a copy to the Nodal Officer), with a prior notice thereof.



SCHEDULE 37

APPROVALS FROM AUTHORITY

1. The Developer shall submit documents and obtain approval/ consent from the Nodal Officer in respect of the following, before proceeding with the implementation of the document, or carrying out of the respective activity for the Project:
 - (a) Proposal for appointment of Project Design Consultant;
 - (b) Proposal for appointment of principal Sub-Contractor (PSC) for Mandatory Project;
 - (c) Proposal for appointment of any other design consultant (ODC) for Provisional Sum Items;
 - (d) Proposal for appointment of any other Sub-Contractor (OSC) for Mandatory Project, provided that the estimated value of such Sub-Contract is greater than ` Ten Crore;
 - (e) General arrangement drawing for whole or part of the Project or any amendments thereof;
 - (f) Floor plans, longitudinal section, cross-section, elevation, roof plan, landscaping plans, artworks, and other structural arrangement requiring approval under Schedule of Dimensions of Railway, and/ or any other clearance from Commissioner of Railway Safety.
 - (g) ...

[Note: To be elaborated, amended or modified as required]

2. The Developer shall, in respect of the items enumerated in paragraph 1 above, provide the relevant documents/ submissions to the PMC, for onwards submission by the PMC to Authority/ Nodal Officer.
3. On receipt of each submission in respect of items enumerated in paragraph 1 above, from the Developer the Nodal Officer shall examine it within a maximum period of 15 days of its receipt, and either issue the NOC (if found in order), or comments enumerating deficiencies/ discrepancies in it. If the submission is returned by the Nodal Officer with comments, the Developer shall amend/ modify the submission in order to

address such comments appropriately and resubmit to the Nodal Officer (through the PMC), who shall again examine the resubmitted documents within a period of 7 days, for checking the compliance with its earlier observations and issue the NOC if found in order, or return it with comments if the earlier comments are not appropriately addressed, or if there is any new comment on the amendments carried out by the Developer. The process shall be repeated until such time as the Nodal Officer issues the NOC.



SCHEDULE 38

LIQUIDATED DAMAGES

[Note: To enumerate instances in which liquidated damages are to be levied against the Developer] [Refer SCDA]

1. Without prejudice to the specific terms of the Agreement, the Developer shall in respect of a delay and/ or default in complying/ adhering to the following requirements of the Agreement, shall be required to pay the liquidated damages:
 - (a) Inadequate supervision of the construction works for the Project;
 - (b) Non-submission, or inadequate report showing non-closure of quality, safety, and environmental issues reported therein by more than 30 days, quarterly audit reports, on quality assurance and testing, site safety and site environmental performance for the Mandatory Project;
 - (c) Failure to get non-conformance notices (NCN) issued by PMC, closed within 30 days;
 - (d) Failure to get site instructions (SI) issued by PMC, closed within 15 days;
 - (e) Failure to get Sub-standard safety condition reporting (SSPCR), issued by PMC closed within 30 days;
 - (f) Failure to achieve to achieve Key Date;
 - (g) Undertaking any unapproved Block Works;
 - (h) Failure to duly fulfil the Conditions Precedent required to be satisfied by the Developer;
 - (i) *[insert other project specific requirements]*
2. The accounting for the liquidated damages levied in any quarter shall be undertaken as on the last day of such quarter, and be payable by the Developer, by the respective due dates specified under the Agreement, and in any event, on or prior to the 7th (Seventh) day of the immediately succeeding quarter. In the event of the failure of the Developer to make such payment, Authority, shall without

prejudice to the other rights of Authority hereunder, be entitled to deduct such amounts from the relevant Performance Guarantee(s).



SCHEDULE 39⁴⁸

EQUIPMENT TO BE SUPPLIED BY AUTHORITY

[Note: This schedule to enumerate the items/ equipment, if any that is to be supplied by Authority to the Developer for the Station Development Project]



⁴⁸ To be filled from DPR.

SCHEDULE 40

BOARD RESOLUTIONS OF DEVELOPER FOR AUTHORISED SIGNATORY



SCHEDULE 41

INDICATIVE TERMS OF SUB-LEASE DEED TO BE EXECUTED WITH END USER

[Note: This schedule enumerates the indicative reference terms / clauses which the Developer shall include in the draft of Sub-Lease Deed to be executed with End Users]

1. [The Sub-Lessee has read and understood the terms of Development Agreement executed between the Authority and the Developer, and has / have fully understood the rights & obligations of and restrictions imposed on the Developer under the Development Agreement.
2. As part of and in consideration of entering into this Sub-Lease Deed, and the covenants and warranties on the part of the Sub-Lessee herein, in accordance with the terms and conditions set forth herein, hereby, offers the Sub-Leased Area, as described in [●] together with the common areas and inventory mentioned in Schedule [●], to the Sub-Lessee, commencing from the date hereof, on an “as is where is” basis, for the duration of the Sub-Lease Term for usage as are permitted under this Sub-Lease Deed.
3. The sub-lease granted to such Sub-Lessee shall be for a maximum period of [●] [insert the period] not exceeding the remainder Lease Period (herein the “**Sub-Lease Term**”). Notwithstanding anything terminate automatically on the Expiry Date.
4. Notwithstanding anything contained in this Sub-Lease Deed and unless expiring or terminating earlier as per terms of Sub-Lease Deed, this Sub-Lease Deed shall terminate automatically with the expiry or termination of the Development Agreement, whichever is earlier, without requiring any act, deed or thing on part of any Party.
5. The Sub-Lessee shall not have any right to further sub-lease or transfer the Sub-Leased Area (either partly or fully) to any other party. However, on written request of the Sub-Lessee and subject to payment through the Developer of a one-time non-refundable fee at the rate of ` [●] per sq.m (the amount may be revised by Authority every five year to account for inflation) of the Sub-Leased Area from such new party to Authority in addition to payment of an equal amount to the Developer through an account payee cheque/demand draft as transfer charges, the Developer may transfer this Sub-Lease to another party. The Developer shall collect, such transfer charge and deposit the same with Authority along with the details of the transferee within 30 (thirty) days of such transfer.

6. The rights of the Sub-Lessee shall be only that of a user for the purpose specified in this Sub-Lease Deed and subject to terms and conditions as contained in the Development Agreement.
7. The Sub-Lessee shall not have any right to make any structural changes in the Sub-Leased Area or to construct, erect, renovate, alter, or otherwise deal with the Sub-Leased Area except to carry out interior finishing works, partitions, furnishing and fitting to the extent necessary for its personal or business uses.
8. The Sub-Lessee shall at all times during the Sub-Lease Term keep the Sub-Leased Area in good and working conditions and shall not damage or allow any damage by its visitors/customers/business clients either to the Sub-Leased Area or to the common areas in the assets.
9. In case of termination of the Development Agreement prior to its expiry, Authority at its sole discretion may decide to continue with the Sub-Lease Deed and thereby take over the rights and responsibilities of the Developer in terms of this Sub-Lease Deed. In case Authority decides not to continue with this Sub-Lease Deed, the Developer shall refund the amount of sub-lease rents (without any interest) already paid in advance by the Sub-Lessee in terms of this Sub-Lease Deed for the un-availed sub-lease period together with the amount of security deposit to the Sub-Lessee. In case the Developer fails to make such refunds, Authority at its own discretion may make the refunds subject to the condition that the total amount of such refunds to all Sub-Lesseees does not exceed the amount of Termination Payment payable to the Developer under the Development Agreement.
10. In the event of the Developer being substituted by a Nominated Company in terms of the Development Agreement, all the Sub-Lease Deeds shall stand transferred and novated from the Developer to the Nominated Company and the Nominated Company shall act as the Developer thereafter.
11. The Sub-Lessee hereby undertakes and confirms that it shall indemnify and keep indemnified the Developer and/or Authority from and against all actions, demands, claims, liabilities, losses, damages, costs, expenses and other liabilities whatsoever brought against, suffered or incurred by the Developer and/or Authority resulting from or by reason of breach, non-observance or non-performance by the Sub-Lessee of any of its obligations set out in this Sub-Lease Deed.
12. The Sub-Lessee hereby undertakes and confirms that It shall obtain or cause to be obtained and shall maintain throughout the Sub-Lease Term all regulatory approvals, clearances, permits and consents, including any and all environmental approvals, that may be required in order for the Sub-Lessee to carry on its business activities

and to undertake its obligations in accordance with the terms of this Sub-Lease Deed.

13. The Sub-Lessee hereby undertakes and confirms that shall not do or permit to be done on the Sub-Leased Area, any activity, which may be contrary to any Applicable Laws and Applicable Permits and it shall in enjoyment of its rights hereunder and fulfillment of its obligations hereunder, always comply with the Applicable Laws and Applicable Permits.
14. The sub-Lessee shall indemnify the Developer and/or Authority in respect of any applicable charges, deposits and other monies levied by third parties for and in relation to the provision by such third parties to the Sub-Lessee of water, electricity, telephone, communication facilities and other utilities and services.
15. The Sub-Lessee shall have only user interest in relation to the Sub-Leased Area and shall have no leasehold right or title to the Sub-Leased Area. The Sub-Lessee agrees and acknowledges that it has only user interest in the Sub-Leased Area and that the same shall be incapable of conversion into leasehold or freehold interest.
16. The Sub-Lessee agrees, confirms and undertakes that it no right to sub-license, sub-lease, assign, underlet or sub-let or part with the possession of the Sub-Leased Area or any part thereof.
17. The Sub-Lessee acknowledges that it has perused all the documents pertaining to the Project and has been made aware of the Developer's rights and obligations pursuant to the Development Agreement.
18. The Developer shall be solely responsible for the design, construction and maintenance of the Project including Assets and Project Utilities.
19. The Developer shall be solely responsible for the due performance of its obligations as specified in the Development Agreement and this Sub-Lease Deed, and Authority shall not be held liable for any claims pursuant to any loss and/or damages suffered by the Sub-Lesseees or any third party on account of Developer's performance or non-performance of its obligations pursuant to the terms of this Sub-Lease Deed.
20. The Sub-Lessee shall deposit the lease rent in a designated bank account only.
21. ...]⁴⁹

[Note: To be elaborated, amended or modified as required]

⁴⁹ Provisions of this Schedule would require to be appropriately modified and incorporated in the detailed draft of Sub-Lease Deed to be prepared by the Developer.

Detailed Project Report (DPR)



DPR

(Note: the DPR to be attached / appended here)



SPECIAL CONDITIONS OF DEVELOPMENT AGREEMENT



SPECIAL CONDITIONS OF DEVELOPMENT AGREEMENT

The following Special Conditions of Development Agreement shall supplement the General Conditions of Development Agreement (GCDA). Whenever there is a conflict, the provisions herein shall prevail over those in the GCDA:

<i>Sub-title</i>	<i>SCDA Clause No</i>	<i>Ref. GCDA Article No.</i>	<i>Provisions</i>
Appointed Date	1.	1.1.5	[180] days from Effective Date
Built Up Area	2.	1.1.18	Built Up Area shall mean the built up area as defined under <i>[enter relevant building bye-laws or as stated in Development Agreement]</i>
End Date	3.	1.1.52	[Last day of the Lease Period ⁵⁰]
Lease Period	4.	1.1.82	<i>[insert years, months and days]</i>
Conditions Precedent of Authority	5.	4.2.1 (d)	<i>[insert details in <u>Schedule 7</u>]</i>
Escrow Agreement	6.	4.3.1(a)(i)	<i>[to be confirmed whether Escrow Agreement to be executed]</i>
Conditions Precedent of Developer	7.	4.3.1 (f) (i)	<i>[insert details in <u>Schedule 7</u>]</i>
Sinking Fund	8.	5.8.24 (a)	<i>[insert amount]</i>
Assistance by Authority in seeking approvals	9.	6.3.2 (c)	<i>[insert details]</i>

⁵⁰ Refer to Clause 2.22.6 (c) of the Bid Document for determining Lease Period.

Sub-title	SCDA Clause No	Ref. GCDA Article No.	Provisions
Joint Inventory - Site	10.	11.2.1(a)	[insert Weeks from Effective Date]
Handover Plan - Site	11.	11.2.1(b)	[insert Weeks from Effective Date]
Joint Inventory – Redevelopment Land	12.	11.3.1(a)	[insert Weeks from Effective Date]
Handover Plan - Redevelopment Land	13.	11.3.1(c)	[insert Weeks from Effective Date]
Joint Inventory – Station Development Land	14.	11.4.1(a)	[insert Weeks from Effective Date]
Handover Plan – Station Development Land	15.	11.4.1(c)	[insert Weeks from Effective Date]
Base line Program	16.	13.5.1	[Insert days from Appointed Date]
Base line Program	17.	13.5.1	[Insert days from receiving PMC's consent]
Location for Office of design team	18.	16.2.2	[Insert Location]
Maximum number of phased Development	19.	19.2.2	[insert maximum number of phases for development]
Escrow Account	20.	27.2.1(a)	[Escrow Account shall be applicable and operational for the entire Term]
Finance Model for Station Facility Management	21.	29.4.3	[confirm if Applicable]
Reference Circle Rate	22.	30.2.9(b)	[insert details]
Maximum extension of Key dates	23.	36.3.4	Not more than [100] weeks

Sub-title	SCDA Clause No	Ref. GCDA Article No.	Provisions
Completion milestone	24.	38.1.3(v)	[Specify completion milestone, if any to the Project]
Notice of Arbitration to Authority	25.	41.3	[Specify address, fax number and e-mail id]
Notice of Arbitration to Developer	26.	41.3	[Specify address, fax number and e-mail id]
Arbitration location	27.	41.4	[Insert location for Arbitration]
Liquidated Damages	28.	Schedule 4 (Project Schedule)	[Note: To be elaborated, amended or modified as required in <u>Schedule 4</u> and <u>Schedule 38</u>]
Variations to Standards and Specifications	29.	Schedule 9A	[Specify amendments / modifications, if any to Manual applicable to this Project]