



MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY

**MASS RAPID TRANSIT SYSTEM
FOR
VERSOVA-ANDHERI-GHATKOPAR CORRIDOR IN MUMBAI**

VOLUME IV B of IV

ESCROW ACCOUNT AGREEMENT

SCHEDULE M

ESCROW ACCOUNT AGREEMENT

Mass Rapid Transit System for Versova- Andheri – Ghatkopar Corridor

BETWEEN

[•] [The Company], a company incorporated in India under the provisions of the Companies Act, 1956, with its registered office at [•] India (hereinafter referred to as the "**Company**" or the "**JVC**" or the "**Concessionaire**", which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes);

And

Mumbai Metropolitan Regional Development Authority (MMRDA), a statutory body constituted under the provisions of the Mumbai Metropolitan Region Development Authority Act, 1974 having its office at Bandra-Kurla Complex, Bandra (East), Mumbai-400 051 acting through its Metropolitan Commissioner (hereinafter referred to as "**MMRDA**", which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and administrators.

And

[•] [name of Lenders Representative] a _____ having its registered office at [•], acting for and on behalf of the Senior Lenders as their duly authorized agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the "**Lenders Representative**" which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

And

[•] [name and particulars of the Escrow Agent] and having its registered office at [•] (hereinafter referred to as the "**Escrow Agent**" which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes);

(Subject to terms of the facility Agreement(s) between the Concessionaire and Senior Lenders. However, MMRDA's position in the cash flows shall not be changed)

And

WHEREAS

The Company is undertaking a project for "Mass Rapid Transit System for Versova-Andheri-Ghatkopar Corridor in Mumbai", Maharashtra on BOOT basis".
The Company has entered into a Concession Agreement datedwith MMRDA (the "Concession Agreement") wherein MMRDA has granted Concession to Company for the work referred to above, on BOOT basis.

The Company has entered into Financing Agreements with Senior Lenders wherein Senior Lenders (the "Lenders") have agreed to finance the MRTS Project in accordance with the terms and conditions set forth in the Financing Documents.

One of the terms of the Concession Agreement is that the Company is required to establish an Escrow Account, inter alia, on terms and conditions satisfactory to Senior Lenders.

NOW IN CONSIDERATION FOR THE PREMISES IT IS AGREED BY THE PARTIES AS FOLLOWS:-

1. Definitions and Construction

1.1 **Definitions:** Each capitalized term used herein and not otherwise defined shall have the definition assigned to such term in the Concession Agreement or the Substitution Agreement as the case may be

"Account" means the Escrow Account to be opened by the Company in accordance with this Agreement;

"Authorized Investment" means any authorized investments which Lenders Representative may, from time to time permit the Company to make in accordance with this Agreement;

"Business Day" means any day on which banks are open for business in Mumbai or in relation to any notice or communication to be made under this Agreement, a day on which banks are open for business in the place of receipt of such notice or communication;

"Company Account" shall mean any bank account of the Company, other than the Escrow Account.

"Debt Service Payments" means the sum of all principal and interest payments due and payable in an Accounting Year to the Lenders under the Financing Documents.

"Enforcement Notice" means any enforcement procedure commenced by the Lenders Representative under any of the Security Documents;

"Escrow Account" means an Escrow Account established in terms of and under this Agreement and shall include Sub-Accounts;

"Event of Default" means an event of default as defined and detailed in the Financing Documents;

"INR" means the lawful currency of India;

"Payment Date" means in relation to any Permitted Payment, the date(s) specified for such payment;

"Permitted Payment" means the Payments Agreed to in this Agreement excluding payment to the Company Accounts as more particularly given in clause 3.3. 1;

"Required Balance" means on any Date in relation to the Sub-Account of the Escrow Account, an amount in INR/Dollars which if proportionately built over the months, would be sufficient to meet Permitted Payment on the Payment Date(s).

"Security Documents" means all or any of the Documents executed, delivered or furnished to secure the Financial Assistance under the Financing Documents including but not limited to the Deed of Hypothecation, Mortgage Deed, Equitable Mortgage, Deed of Guarantee, Pledge Agreement, Undertakings, Negative Lien and other incidental or supplemental documents related thereto.

"Sub-Accounts" means the Sub-Accounts of the Escrow Account, into which the monies due in relation to Permitted Payment 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 Sub Account and paid out therefrom on the Payment date.

"Year" means each twelve month period ending on March 31.

1.2 Construction

In this Agreement:

- Unless the context otherwise requires, the singular includes the plural and vice versa;
- Headings and the use of bold typeface shall be ignored in its construction;
- A reference to a Clause or Schedule is, unless indicated to the contrary, a reference to a clause or schedule to this Agreement;
- References to this Agreement shall be construed as references also to any separate or independent stipulation or agreement contained in it;
- The words "other" or "otherwise" and "whatsoever" shall not be construed to be as any limitation upon the generality of any preceding words or matters specifically referred to;
- References to the word "includes" or "including" are to be construed without limitation;
- References to a person shall include such person's successors and permitted assignees or transferees;
- All references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- The words "herein", "hereto" and "hereunder" refer to this Agreement as a whole and not to the particular Clause in which such word may be used;
- Words importing a particular gender include all genders;
- "Person" includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association;
- Any reference to a public organization shall be deemed to include a reference to any successor to such public organization or any organization or entity which has taken over the functions or responsibilities of such public organization;
- References to "Party" means a party to this Agreement and references to "Parties" shall be construed accordingly; and
- References to any law shall include references to such law as it may, after the date of this Agreement, from time to time be amended, supplemented or re-enacted.

2. THE ACCOUNTS

2.1 Acceptance of Appointment of Escrow Agent

The Escrow Agent hereby agrees to act as such and to accept all payments and other amounts to be delivered to or held by the Escrow Agent pursuant to the terms of this Escrow Agreement. Escrow Agent shall hold and safeguard the Escrow Account during the term of this Escrow Agreement and shall treat the amount in the Escrow Account as monies deposited by Company / MMRDA with the Escrow Agent, as agent for the benefit of the Lenders Representative, MMRDA and the Company or their

respective nominees, successors or assigns, in trust in accordance with the provisions of this Escrow Agreement. In performing functions and duties under this Escrow Agreement, the Escrow Agent shall act as agent for the Lenders Representative, MMRDA and the Company.

The Company also hereby declares that all right, title and interest in and to the Escrow Account, the Authorized Investments and Permitted Payments made from the Escrow Accounts shall be vested in the Escrow Agent and held in trust for the Senior Lenders acting through Lender's Representative, MMRDA and the Company or their respective nominees, successors or assigns in accordance with the terms of this Agreement and as their respective interests are provided for herein. Amounts deposited in the Escrow Account from time to time shall be held by the Escrow Agent in trust and received and applied as provided in and in accordance with the Agreement. No person other than the Lenders Representative, MMRDA and the Company shall have any rights hereunder as the beneficiaries of or as third party beneficiaries under this Agreement.

2.2 Establishment of Escrow Account

At least thirty (30) days prior to seeking any disbursement (including issue of guarantees or all forms of Financial Assistance), the Company shall establish the Escrow Account with the Escrow Agent.

2.3 Maintenance of the Account

The Escrow Agent shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations and pay the maximum rate of interest payable to its customers on the balance in the said account from time to time.

2.4 Operating Procedures

The Escrow Agent and the Company shall agree (after consultation with the Lenders Representative) on the detailed mandates, terms and conditions and operating procedures for the Escrow Account but in the event of any inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

3. Currency

3.1 The Escrow Account shall be established with the Branch of the Escrow Agent. The Escrow Account shall be denominated in INR.

3.2 Deposits

3.2.1 The Company

(A) agrees, confirms and undertakes that it shall deposit and/or credit the Escrow Account with:

- (i) all its receivables;
- (ii) all proceeds received pursuant to any insurance claims; and
- (iii) all monies received from any other sources in relation to and in respect of the

- Project.
- (iv) all monies received in relation to the Project from any source, including the Senior Lenders, lenders of Subordinated Debt and MMRDA
 - (v) all monies received by the Concessionaire from its shareholders, in any manner or form
 - (vi) all Fare levied and collected by the Concessionaire
 - (vii) Revenues from Additional Concessions granted by MMRDA and any other revenues from or in respect of the MRTS Project
 - (viii) Capital Contribution and any other monies disbursed by MMRDA or Government of Maharashtra or Government of India into and / or credit the Escrow Account
 - (ix) Termination payments and other moneys paid or disbursed in accordance with the provisions of the Concession Agreement and / or the Substitution Agreement.
- (B) may make other deposits of the Company's other funds into the Escrow Accounts at any time. Provided however that the terms of this Agreement shall apply to such other funds deposited in the Escrow Account by the Company.

3.2.2 The MMRDA agrees, confirms and undertakes that it shall deposit and/or credit the Escrow Account with capital contribution, termination payments and other monies paid or disbursed in accordance with the provisions of the Concession Agreement and/or the Substitution Agreement.

3.2.3 The Lenders Representative agrees, confirms and undertakes that the Senior Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project;

3.2.4 The Escrow Agent shall ensure that all interest, if any, on the balances of the Escrow Accounts and interest on Authorised Investments made from the Escrow Accounts shall be credited to or deposited in the Escrow Account.; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Concessionaire in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

3.3 **Withdrawals**

3.3.1 The Escrow Agent shall withdraw amounts from the Escrow Accounts and appropriate in the following order every month as more particularly given in the Bank Proforma in Schedule 1 and deposit in the relevant Sub-Account for payments and if not due in a month then appropriate proportionately in such month and retain in the Sub-Account and pay out therefrom on the payment Date(s):

- (a) all taxes, duties and statutory payments as payable by the Company;
- (b) all expenses in connection with and relevant to the construction of MRTS Project or in any addition or capacity augmentation after COD by way of payment to the Construction contractor, suppliers, vendor and all such people and such other persons as may be specified in the Financing Documents;
- (c) O&M Expenses including Fare collection expenses incurred by the Company directly or through O&M Contractor as set forth in the O&M Contract
- (d) the whole or part of the expense on repair work or O&M Expense including Fare collection expenses incurred by MMRDA on account of exercise of any of its rights under this Agreement provided MMRDA certifies to the Escrow Bank that MMRDA had incurred such expenses in accordance with the provisions of this Agreement as well as for any addition or capacity augmentation of the MRTS Project after the COD.;
- (e) monthly proportionate provision of Debt Service Payments due in an

- Accounting Year and payment of Debt Service Payments in the month when due;
- (f) Reimbursements of expenditure incurred by MMRDA if any, for payment of insurance premia, etc., which are otherwise company's responsibility, on account of failure on part of the Company to keep such insurance(s) effective and in force;
- (g) debt service in respect of Subordinated Debt;
- (h) Any payments and Damages due and payable by the Company to MMRDA pursuant to this Agreement;
- (i) Any reserve requirements set forth in the Financing Agreements;
- (j) Balance, if any, in accordance with the instructions of the Company.

The amounts specified in Clause 3.3.1 (a) to (j) constitute the Permitted Payments. Not later than 60 (sixty days) prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders Representative, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 3.3.1; provided that such amounts maybe subsequently modified, with prior written approval of the Lenders Representative, if fresh information received during the year makes such modification necessary.

3.3.2 Notwithstanding anything to the contrary contained in this Agreement upon the earlier of (i) issue of Termination Notice (ii) termination of Concession Agreement, or (iii) the expiry of Concession Period, all amounts standing to the credit of the Escrow Account shall be appropriated and dealt with in the following order:

- (a) all taxes, dues, & statutory duties as payable by the Company;
- (b) all accrued Debt Service Payment;
- (c) outstanding Subordinated Debt;
- (d) all outstanding dues payable to contractors or suppliers or vendors for capital works;
- (e) all accrued O&M Expenses;
- (f) any payments and Damages due and payable by the Company to MMRDA pursuant to this Agreement, including Termination claims;
- (g) retention and payments relating to pre divestment liabilities;
- (h) any other payments required to be made under this Agreement; and
- (i) balance, if any, on the instructions of the MMRDA.

3.4 **Application of Insufficient Funds** As provided in Clause 3.3, the application of funds in the Escrow Account shall be in the serial order of priority set forth therein. If the funds available for payment to the Sub-Accounts are sufficient to pay a portion, but not all, of the amount required to be paid to any Sub-Account, the Escrow Agent shall apply such funds in the serial order of priority set forth in Clause 3.3, until exhaustion thereof.

4. Authorized Investments

4.1 **Power to Invest** The Escrow Agent shall invest the amounts standing to the credit of any of the Sub-Accounts in Authorized Investments on the instructions of the Company as approved by the Lenders Representative, from time to time, in accordance with the provisions of the Agreement. The Escrow Agent shall not be bound to and shall not make investments under the Indian Trusts Act, 1882 without prior approval of the Lenders Representative.

4.2 Procedure for Investments

4.2.1 All Authorized Investments shall be made and/or realized by the Escrow Agent on the instructions of the Company as approved by the Lenders Representative from time to time, in accordance with the provisions of this Agreement.

4.2.2 All documents of title or other documentary evidence of ownership with respect to

Authorized Investments made out of any Escrow Account will be held in the custody of the Escrow Agent.

4.3 Realizations

Upon the realization of any investment made under this Clause, the proceeds of realization shall immediately be credited to the relevant Sub-Account by the Escrow Agent or immediately invested in another Authorized Investment in accordance with the Company's instructions as approved by the Lenders Representative.

4.4 Mandatory Realizations

In the event that the Company becomes aware that any Authorized Investment has ceased to be an Authorized Investment, the Company shall immediately instruct the Escrow Agent on a best efforts basis to realize such Authorized Investment on its maturity date or earlier if possible under intimation to the Lenders Representative or MMRDA.

4.5 Accounts include Investments

Any reference in this Agreement to the balance standing to the credit of the Escrow Account shall be deemed to include a reference to the amount of the Authorized Investments in which all, or part of, such balance is for the time being invested.

4.6 Interest on Investments

Any interest or other income received on account of Authorized Investments shall be to the credit of the Escrow Account.

4.7 Enforcement Notice

On receipt of an Enforcement Notice from the Lenders Representative, the Escrow Agent shall realize the Authorized Investments, whether such investments have matured or not on a best effort basis, and apply the proceeds as directed by the Lenders Representative.

5. Withdrawals following Event of Default

5.1 If the Lenders Representative notifies the Escrow Agent that an Event of Default is likely to occur or has occurred, and is continuing, then, until such time as the Lenders Representative has notified the Escrow Agent that the Event of Default has been cured or waived under the Financing Documents, the Escrow Agent shall only make withdrawals from the Escrow Accounts which constitute Permitted Payment and shall not make any payments from the Escrow Account to the Company Accounts.

6. Escrow Agent Provisions

6.1 The Escrow Agent and the Lenders

The Company hereby appoints the Escrow Agent to act as trustee for the Lenders Representative in connection herewith and authorises the Escrow Agent to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Agent by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Agent accepts such appointment

pursuant to the terms hereof.

6.2 Particular Duties of the Escrow Agent

The Escrow Agent:

- (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 Company upon a certificate signed by or on behalf of the Company;
- (B) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or documents believed by it to be authentic;
- (C) shall, within five (5) Business Days after receipt, deliver a copy to the Lenders Representative of any notice or document received by the Escrow Agent in its capacity as the Escrow Agent from the Company or any other person hereunder or in connection herewith; and
- (D) shall, within five (5) Business Days after receipt, deliver a copy to the Company of any notice or document received by the Escrow Agent from the Lenders Representative in connection herewith.

6.3 Segregation of Funds

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

6.4 Termination

6.4.1 This Agreement shall remain in full force and effect so long as amounts remain outstanding from the Company in respect of the Financial Assistance received by it from the Senior Lenders or its obligations to MMRDA, unless terminated earlier by the mutual consent of the parties or otherwise in accordance with the provisions of this Clause 6.4.

6.4.2 The Company may, by not less than 45 days prior notice to the Escrow Agent, MMRDA and the Lenders Representative, terminate this Agreement and appoint a new Escrow Agent, provided that the new Escrow Agent is acceptable to the Lenders Representative and arrangements are made satisfactory to the Lenders Representative for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Agent.

6.5 Fees

The Company shall pay the Escrow Agent fees in an amount and at such times as may be agreed between the Escrow Agent and the Company.

7. Escrow Agreement Defaults

7.1 If the Company is in breach of any of its obligations under this Agreement and, has been issued a Notice of Default from the lenders representatives, the Company shall remedy the same, in the manner detailed herein below;

(A) In the case of a failure to deposit funds received by the Company in the Escrow Account, The Company shall deposit the same in the Escrow Account within five Business Days of receipt of such notice;

(B) In the case of a breach consisting of causing the Escrow Agent to transfer funds to any Company Account in breach of the terms of this Agreement, The Company shall by depositing deposit the relevant funds in the Escrow Account or any Sub-Account in which such transfer should have been made within five Business Days of receipt of such notice.

(C) In the case of a breach of the Company's obligations under Clause 4, The Company shall instruct the Escrow Agent to realise any investment made in breach of Clause 4 within five (5) Business Days of receipt of such notice; or

(D) In the case of any other breach, the Company shall remedy the same within five (5) Business Days to the satisfaction of the Lenders Representative.

7.2 The Company and the Escrow Agent agree and confirm that any default by either the Company or the Escrow Agent in the performance of their respective obligations under this Agreement resulting, in the opinion of the Lenders Representative, in a breach of this Agreement, shall qualify as an Event of Default under the Financing Documents/Security Documents.

8. Miscellaneous

8.1 **Closure of Accounts** The Escrow Agent shall, at the request of the Company made on or after the payment by the Company of all outstanding amounts under the Financing Documents / Concession Agreement and upon confirmation of receipt, close the Escrow Accounts and pay any amount standing to the credit thereof to the Company.

Notwithstanding anything to the contrary contained in this Agreement, this Agreement shall remain in full force and effect till the Transfer Date provided however if MMRDA shall certify to the Escrow Agent that Concession Agreement and/or the Concession has been terminated on account of default of the Concessionaire under this Agreement, then notwithstanding anything to the contrary contained herein, all the amounts standing to the credit of the Escrow Account shall be dealt with in accordance with provisions of Clause 3.3.2.

8.2 **Successors and Assignors** This Agreement shall be binding on and shall enure to the benefit of the Parties and their respective successors and permitted assigns.

8.3 **No Set Off s**

The Escrow Agent 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 declared by the Escrow Agent that the monies and properties held by the Escrow Agent shall not be considered as part of the assets of the Escrow Agent and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Agent be wholly excluded from the assets of the Escrow Agent in such bankruptcy or liquidation.

8.4 **Notices**

8.4.1 All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier, registered or

certified mail or facsimile. The address for service of each Party and its facsimile number is set out under its name on the signing pages hereto. All notices shall be effective upon actual receipt save that where a notice is received after 5.30 p.m. on a Business Day or on a day that is not a Business Day, such notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing a Party giving or making a notice or communication by facsimile shall promptly deliver a copy of such notice or communication personally, by courier or mail to the addressee of such notice or communication.

8.4.2 Any party may by notice change the addresses and/or addresses to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

8.5 **Waiver** Failure by any Party at any time to enforce any provision of this Agreement or to require performance by other Parties of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part of it or the right of the relevant Party to enforce any provision in accordance with its terms.

8.6 **Sever ability** If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable: the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

8.7 **Amendments** No amendment to this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Parties.

8.8 **Governing Law**

This Agreement shall be governed by and construed in accordance with Indian law.

8.9 **Regulatory Approvals** The Escrow Agent shall use its best efforts to procure and shall thereafter maintain and comply with all regulatory approvals required for it to establish and operate the Escrow Accounts.

8.10 **Notification of Balances**

Seven Business Days prior to each Payment Date (and for this purpose the Escrow Agent shall be entitled to rely on an affirmation by the Company and/or the Lenders Representative as to the relevant Payment Dates), the Escrow Agent shall notify the Lenders Representative of the balance of the Escrow Account as at the close of business on the immediately preceding Business Day.

IN WITNESS whereof the Company has caused its Common Seal to be affixed hereto and to a triplicate hereof on the date first above written and the Escrow Agent, MMRDA and the Lenders Representative have caused the said triplicate to be executed by the hand of an authorized official.

SIGNED AND DELIVERED BY)

.....Within named Escrow Agent)
by the hand of)

an authorised official. of the Account)
Trustee)

Address:
Fax Number:
Attention:

SIGNED AND DELIVERED BY)
..... within named Lenders)
Representative by the hand of)

an authorised official of the Lenders)
Representative Address: Fax Number:
Attention:

SIGNED AND DELIVERED BY)

MMRDA within named by the hand of)
an authorised official of the MMRDA)
Address:
Fax Number:
Attention:

THE COMMON SEAL OF) has pursuant to the Resolution of its Board) of
Directors passed in that behalf on the.....day) of..... 200.... hereunto been affixed in the)
presence of Shriand) ShriDirectors) who
have signed these Presents in token) thereof and Secretary/authorized Person) who has
countersigned the Same in token thereof.)

Address:
Fax Number:
Attention:

**Note: - The language of this format is indicative only and will be finalised by the
Concessionaire, lenders representative and the Escrow Agent with the approval
of MMRDA.**