

**MUMBAI METROPOLITAN REGION
DEVELOPMENT AUTHORITY**

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

VOLUME I of IV

**CONCESSION AGREEMENT
(ARTICLE 1 to ARTICLE 41)**

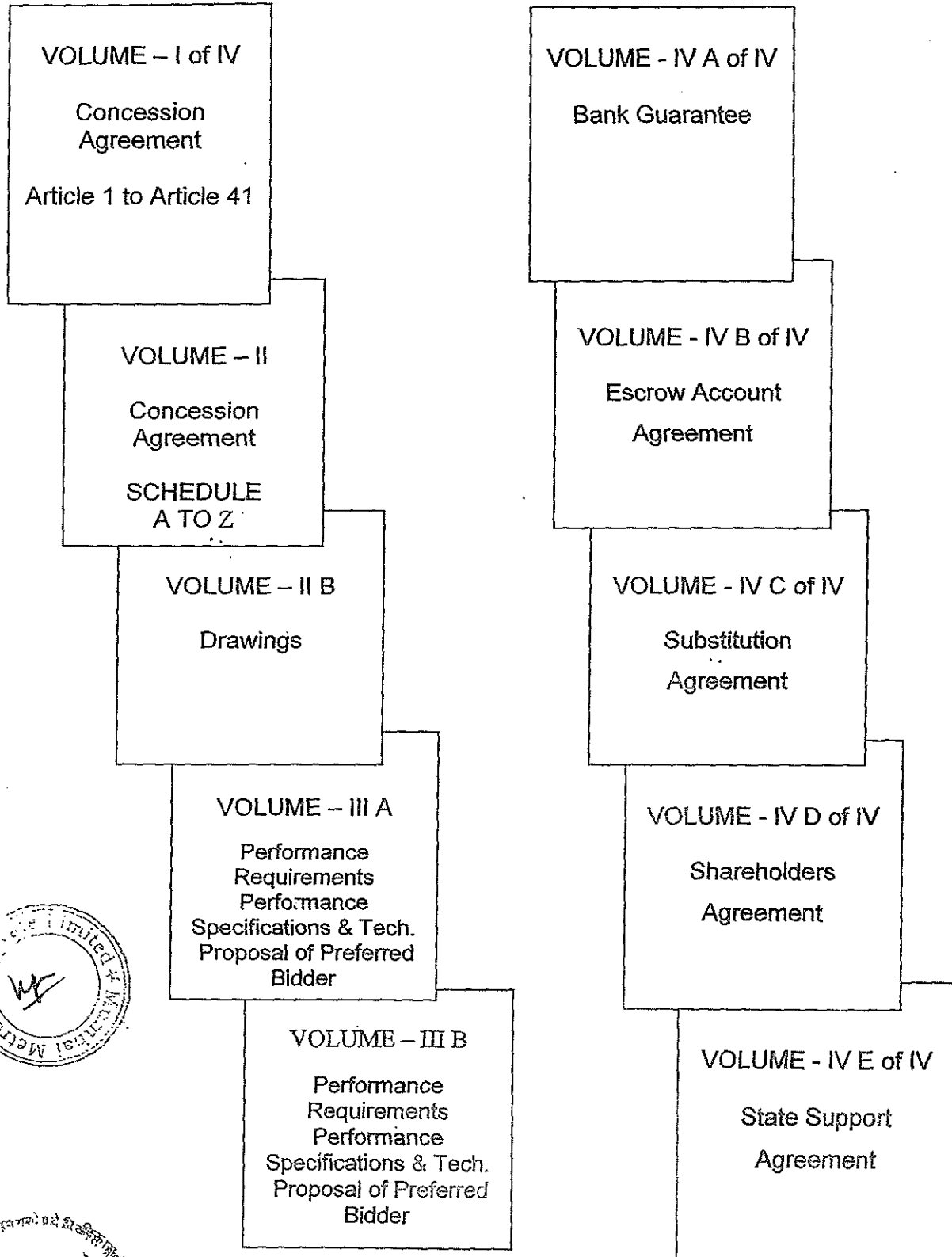
RELIANCE Energy
Anil Dhirubhai Ambani Group

 **VEOLIA**
TRANSPORT

VERSOVA-ANDHERI-GHATKOPAR CORRIDOR

CONCESSION AGREEMENT

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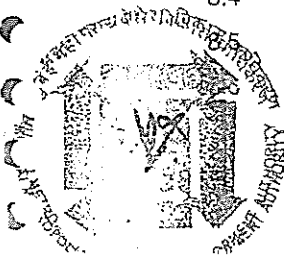
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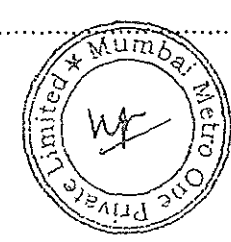


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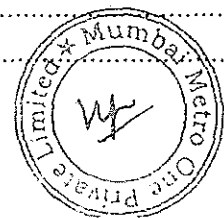


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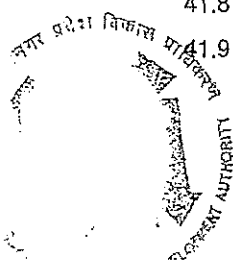
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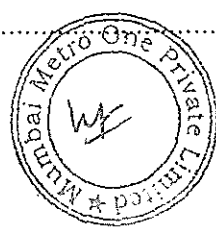
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CONCESSION AGREEMENT

This CONCESSION AGREEMENT is entered into on this 7th March, 2007

BETWEEN

Mumbai Metropolitan Region Development Authority (MMRDA), established under the Mumbai Metropolitan Region Development Authority Act, 1974, having its Administrative Office at Bandra-Kurla Complex Bandra (East), Mumbai – 400 051 hereinafter referred to as "MMRDA" (which expression shall include its successors and assigns) of the First Part

AND

M/s. MUMBAI METRO ONE PRIVATE LIMITED., a Private Company Incorporated under the provisions of the Companies Act 1956, having its registered office at E-4(i), 3rd Floor, MIDC Area, Marol, Andheri West, Mumbai – 400 093 (hereinafter referred to as the "Concessionaire") which expression shall include its successors and assigns and permitted substitutes repugnant to the context or meaning thereof include its successors and assigns and permitted substitutes of the Second Part.

WHEREAS

A. The Government of Maharashtra in the Department of Urban Development has authorized MMRDA as the Project Implementation Agency for the implementation of a rail based Mass Rapid Transit System (MRTS) along the Versova-Andheri-Ghatkopar corridor (hereinafter referred to as "Project") through a Concession on Public Private Partnership format ("PPP") and as by its Resolution No MUT – 1004/1671/158/2004/UD-10 dated 19 August 2004 and Resolution No UUD/MRD-3306/1662/CR 32 A/06 dated June 14, 2006 approved for issue of Government Notification for implementing the Project under Indian Tramways Act 1886 (Bombay Amendment Act 1948).

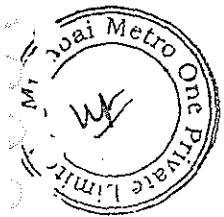
B. Governments of Maharashtra vide its Government Notification No. _____ dated _____ approved the implementation of the Project under the Indian Tramways Act 1886 (Bombay Amendment Act 1948) – Under Issue

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Office: SUHARV
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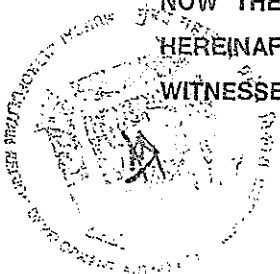


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- C. MMRDA by its Tender Notice No. T/MRTS.IMPLN/VAG/2004-Aug dated 21.08.2004 (the "Tender Notice") invited Proposals for selection of Bidder under its Request for Proposals (RFP) for the Development and Operation, of MRTS for Versova-Andheri-Ghatkopar corridor involving survey, investigation, design, engineering, financing, procurement, construction, operation and maintenance of the MRTS on Build, Own, Operate and Transfer (BOOT) basis through Public Private Partnership (PPP) subject to and on the terms and conditions contained the RFP and had pursuant thereto short-listed certain bidders including, Inter alia, the consortium comprising Reliance Energy Limited and Veolia Transport (formerly known as Connex S.A. (collectively the "Consortium") with Reliance Energy Limited as its Lead Consortium Member.
- D. MMRDA invited financial bids from the short listed bidders pursuant to its Tender Notice for undertaking, inter alia, the work referred to in Recital A.
- E. MMRDA after evaluating the aforesaid bids in accordance with the provision indicated in the RFP, selected the bid submitted by the Consortium as Preferred Bidder and issued its Letter of Intent (LOI) No. T/MRTSIMPLN/VAG/2006 dated June 20, 2006 to the Consortium requiring the execution of the Concession Agreement.
- F. MMRDA, and the Preferred Bidder have entered into the Shareholder's Agreement dated 7th March, 2007 for the purpose of recording the understanding and their agreement on the terms and conditions regulating their relationship as shareholders of the Concessionaire including matters relating to the transfer of equity shares, the manner in which the Concessionaire's affairs will be conducted and the parties' mutual rights and obligations.
- G. In accordance with the requirement of the said bid submitted by the Consortium, the Preferred Bidder and the MMRDA has jointly incorporated a Special Purpose Vehicle (SPV) under the provisions of the Companies Act, 1956 (hereinafter called the Concessionaire) to enter into this Concession Agreement pursuant to the LOI for undertaking, inter alia, the survey, investigation, design, engineering, financing, procurement, construction, operation, maintenance ownership and transfer of the MRTS, as defined hereinafter on BOOT basis as referred to in Recital ' A ' and to fulfill other obligations of the Concessionaire.
- H. It is deemed necessary and expedient to enter into this Agreement to record the terms agreed by and between the Parties.



NOW THEREFORE IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS
HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY AGREE AND THIS AGREEMENT
WITNESSETH AS FOLLOWS:



ARTICLE 1
DEFINITIONS & INTERPETATION

1.1 Definitions

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

"Accounting Year" means the financial year commencing from 1st April of any calendar year and ending on 31st March of the next calendar year;

"Additional Facilities" means the facilities which the Concessionaire may provide or procure for the benefit of the users of the MRTS and which are in addition to the Project Facilities, and not situated on the Site;

"Adjusted Equity" means the Equity adjusted on the first day of the current year ("Reference Date"), in the manner set forth below:

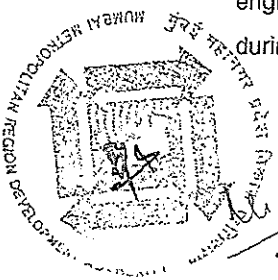
- (i) on or before COD, the Adjusted Equity shall be a sum equal to Equity expended on the Project;
- (ii) after COD, an amount equal to the Adjusted Equity as on COD shall be reduced by 7.5% per annum and the amount so arrived shall be revised to the extent of variation in WPI occurring between COD and the Reference Date.

"Affected Party" shall have the meaning set out in Article 27.1;

"Agreement" means this Agreement, the Schedules A through Y hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Applicable Laws" means all laws, promulgated or brought into force and effect by GOI or GOM including regulations and rules made thereunder, and judgments, decrees, injunctions, writs and orders of any court of competent jurisdiction, as may be in force and effect during the subsistence of this Agreement and as applicable to the Project.;

"Applicable Permits" means all clearances, permits, authorizations, consents and approvals required to be obtained or maintained under Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the MRTS Project during the subsistence of this Agreement;



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"Appointed Date" means the date on which this Concession Agreement is executed and shall be deemed to be the date of commencement of the Concession Period;

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

"Article" means the Articles of this Concession Agreement;

"Bank" means a bank incorporated in India and having a minimum net worth of Rs.10,000 million (Rupees ten thousand million) and having a branch in the proximity of the Project or at any other place acceptable to MMRDA;

"Bid" means the documents in their entirety comprised in the Proposal submitted by the Preferred Bidder in response to the Tender Notice in accordance with the provisions thereof and includes all clarifications and additional information provided by the Preferred Bidder to MMRDA;

"Bid Security" means the security provided by the Bidder to MMRDA along with the Bid in the sum of Rs.10 million (Rupees Ten Million only) in accordance with the Tender Notice and which is to remain in force until substituted by the Performance Security.

"Preferred Bidder" means Consortium referred to in Recital C and E above;

"Capital Contribution" shall have the meaning ascribed thereto in Article 23.1;

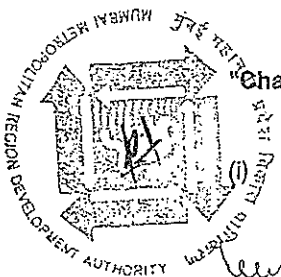
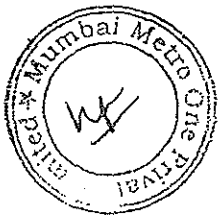
"Cash Flow Projections" means the estimate of cash-flows of this project as set forth in Schedule K;

"COD" means the Commercial Operations Date of the MRTS Project and shall be the date on which the Independent Engineer has issued the Completion Certificate/Provisional Completion Certificate subsequent to the Safety Commissioner/ engineer declaring system fit for carriage of Commuters in accordance with the provisions of the Indian Tramways (Bombay Amendment) Act, 1948;

"Commercial Activities" shall mean the activities and services listed in Schedule V;

"Change in Law" means the occurrence of any of the following after the date of financial Bid.

(i) The enactment of any new Indian law;



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- (ii) The repeal, modification or re-enactment of any existing Indian law;
- (iii) The commencement of any Indian law which has not entered into effect until the date of financial Bid;
- (iv) A change in the interpretation or application of any Indian law by a court as compared to such interpretation or application prior to January 10, 2006;

"Change of Scope" shall have the meaning ascribed thereto in Article 16;

"Commuter" means the users of MRTS;

"Company" means the Company acting as the Concessionaire under this Agreement;

"Completion Certificate" means the Certificate issued by the Independent Engineer pursuant to Article 17;

"Concession" shall have the meaning ascribed thereto in Article 3.1;

"Concession Period" means the period beginning from the Appointed Date and ending on the earlier of Expiry Date of Concession or Termination Date as provided in Article 3.5;

"Consortium" shall have the meaning set forth in Recital C above;

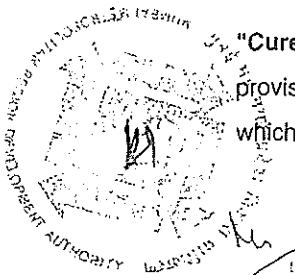
"Consortium Members" means Reliance Energy Limited and Veolia Transport (formerly known as Connex S.A.);

"Construction Period" means the period beginning from the Appointed Date and ending on the COD and shall not exceed 5 (five) years unless otherwise extended as per the terms of this Agreement;

"Construction Works" means all works and things necessary to obtain the Completion Certificate in accordance with this Agreement;

"Contractor" means the person or persons, if any, with whom the Concessionaire has entered into, all or any of the Project Agreements other than the Financing Documents;

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and upon failing of which the Agreement may be terminated by the other Party in accordance with this Agreement;



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"Damages" shall have the meaning ascribed thereto in Article 1.2.1 (q);

"Day" means calendar day;

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding on the Termination Date:

- (i) the principal amount of the debt provided by the Senior Lenders under the Financing Documents for financing the Project (the "principal") but excluding any part of the principal that had fallen due for repayment prior to the Termination Date;
- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-Article (i) above up to the Termination Date but excluding (a) any interest, fees or charges that had fallen due one year prior to the Termination Date and (b) penal interest or charges, payable under the Financing Documents to any Senior Lender (other than on account of an MMRDA default)
- (iii) any Subordinated Debt, for financing the Project;

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

"Development" means all works and things necessary to complete the MRTS Project for use of the commuter and other users thereof in accordance with this Agreement;

"Dispute" shall have the meaning set forth in Article 37.1 (a);

"Dispute Resolution Procedure" means the procedure for Dispute resolution set forth in Article 37;

"Divestment Requirements" means the obligations of the Concessionaire and MMRDA for and in respect of the transfer of the MRTS project as set forth in Article 31;

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

"Drawings" means all the drawings, calculations and documents pertaining to the MRTS Project and shall include "as built" drawings of the MRTS Project as approved by the Independent



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Engineer;

"**EPC Contract**" means contract or contracts entered into by the Concessionaire with one or more Contractors for the design, engineering, procurement of materials and equipment, construction or any of its activities, and completion of the MRTS Project in accordance with the provisions of this Agreement;

"**Emergency**" means a condition or situation that is likely to endanger the safety of the individuals on or about the MRTS Project including users thereof or which poses an immediate threat of material damage to any of the Project Assets;

"**Encumbrances**" means any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries (other than such designation of the Senior Lenders pursuant to the Financing Documents) or any similar arrangement under any insurance policy pertaining to the MRTS Project, physical encumbrances and encroachments on the Site where applicable herein excluding existing utilities and roads referred to in Article 13.2;

"**Equity**" means the sum expressed in Indian Rupees representing the equity share capital.

"**Escrow Account**" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be, in accordance with the provisions of this Agreement described in Article 24;

"**Escrow Agreement**" shall have the meaning ascribed thereto in Article 24.2.1;

"**Expiry Date**" is the date the Concession hereunder expires pursuant to the provisions of Article 3.2 of this Agreement;

"**Fare**" means the toll/charge(s) levied on and payable by the commuters of MRTS Project in accordance with the provisions of Indian Tramways Act, 1886 (Bombay Amendment 1948), provisions of the Fare Schedule and provisions of this Agreement;

"**Fare Schedule**" means the Resolution No MUT-1004/1671/158/2004/UD-10 dated 19 August 2004 issued by GOM in exercise of the powers conferred by the Indian Tramways Act, 1886 (Bombay Amendment Act 1948) in respect of the levy and collection of the toll from Commuters and a copy of which is at Schedule L;



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"Financial Close" means the date on which the Financing Documents providing for the full loan funding by the Senior Lenders for meeting the Total Project Cost have become effective and the Concessionaire has immediate access to such funding under the Financing Documents;

"Financing Documents" means the documents executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders and/or Subordinate Lenders by way of loans, guarantees, subscription to debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Project and includes amendments or modifications made in accordance with Article 8.2.(iii);

"Financing Package" means the financing package of the Project furnished by the Concessionaire after the execution of this Agreement and agreed to by the MMRDA setting forth the envisaged Project cost and the means of financing thereof and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved for the purposes of funding of the Project under the Financing Documents;

"Force Majeure" or "Force Majeure Event" shall mean an act, event, condition or occurrence specified in Article 27;

"GOI" means the Government of India;

"GOM" means the Government of Maharashtra;

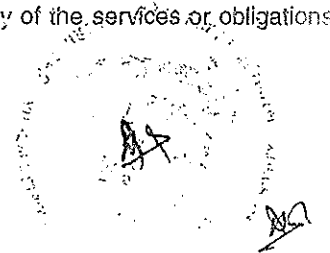
"Good Industry Practice" means those practices, methods, techniques, standards, skills, diligence and prudence which are generally and reasonably expected of and accepted internationally from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and would mean good engineering practices in the design, engineering, construction and project management and which would be expected to result in the performance of its obligations by the Concessionaire and in the operation and maintenance of the MRTS Project in accordance with this Agreement, Applicable Laws, Applicable Permits, reliability, safety, environment protection, economy and efficiency;

"Governmental Agency" means GOI, GOM or any ministry, department, commission, Board, authority, instrumentality or agency, under the control of GOI or GOM having jurisdiction over all or any part of the MRTS Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;



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"High Level Steering Committee" means the Committee created by Government of Maharashtra as indicated in Article 10;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 35.3;

"Independent Engineer" shall have the meaning ascribed thereto in Article 20;

"Indirect Political Event" shall have the meaning ascribed thereto in Article 27.3;

"Lenders' Representative" means the person(s) duly authorised by the Senior Lenders to deal with the Parties to the Agreement with regard to the issues arising out of and contained in this Agreement;

"Local Authority" means Municipal Corporation of Greater Mumbai (MCGM);

"LOI" means letter of Intent as referred in Recital D;

"Maintenance Manuals" shall have the meaning ascribed to it in Article 18.2;

"Maintenance Reports" shall have the meaning ascribed to it in Article 19.1;

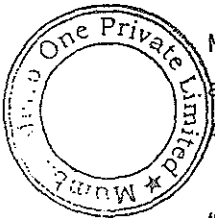
"Material Adverse Effect" means the effect of any act or event which materially and adversely affects the ability of either Party to exercise its material rights or perform any of its material obligations under and in accordance with the provisions of this Agreement.

"Material Breach" means a breach by either Party of any of its obligations in this Agreement which breach shall have failed to cure within the Cure Period and where such breach materially and adversely affects the Project;

"MMRDA" means the Mumbai Metropolitan Region Development Authority as defined in Recital A;

"MMRDA Representative" means such person or persons as may be authorized in writing by MMRDA to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of MMRDA under this Agreement;

"MRTS" means Mass Rapid Transit System for Versova-Andheri-Ghatkopar Corridor in Mumbai in the state of Maharashtra;



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"Non Political Event" shall have the meaning ascribed thereto in Article 27.2;

"O & M" means the operations and maintenance of the MRTS Project during the Operations Period and includes but is not limited to functions of operations, maintenance, collection and appropriation of Fares and performance of other services incidental thereto and performance of all obligations of the Concessionaire relating thereto hereunder;

"O & M Contract" means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for O&M of the MRTS Project;

"O & M Contractor" means the person or entity with whom the Concessionaire may enter into an O&M Contract for discharging part or whole of the O&M functions for and on behalf of the Concessionaire;

"O & M Expenses" means expenses incurred by or on behalf of the Concessionaire duly certified by its Statutory Auditors for all O&M activities during Operations Period, including, without limitation (a) all cost of salaries and other employee compensation (b) cost of materials, supplies, utilities and other services (c) premia for insurance (d) all taxes, duties, cess and fees incurred in order to obtain and maintain all Applicable Permits necessary for the O&M of the MRTS Project at its full design capacity, (e) all repair, replacement and maintenance costs of the MRTS Project (f) payments required to be made under the O&M Contract or any other contract in connection with or incidental to O&M and (g) all other expenditures required to be incurred under Applicable Law or under Applicable Permits necessary for the operation and maintenance of the MRTS Project according to the Specifications and Standards at its full design capacity;

"O & M Works" means all works necessary to keep the MRTS Project in operation during the Operations Period in accordance with this Agreement;

"Operations Period" means the period commencing from COD and ending on the Transfer Date;

"Penalty Point" shall have the meaning ascribed thereto in Article 18.7;

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

"Performance Security" shall have the meaning ascribed thereto in Article 5.1;

"Performance Specifications and Standards" means the specifications and standards relating



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to the quality, capacity and other requirements of the Project set forth in Schedule D and any modifications or any additions as included in the design and engineering for the Project submitted by the Concessionaire and expressly approved by the MMRDA;

"Political Event" shall have the meaning ascribed thereto in Article 27.4;

"Preliminary Notice" shall have the meaning attributed thereto in Article 30.1.2;

"MRTS Project" or **"Project"** means the development, design, financing, procurement, engineering and construction, operation and maintenance of the MRTS Project in accordance with the provisions of this Agreement and shall include all works relating to or in respect of the MRTS Project as described in Article 2;

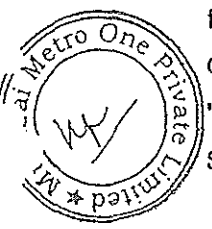
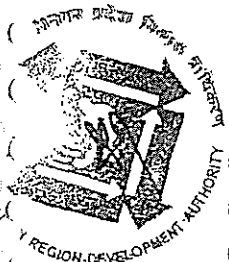
"Project Agreements" means including but not limited to this Agreement, the Shareholder's Agreement, the Escrow Agreement, the Substitution Agreement, and the Financing Documents, EPC Contract, if any, the O&M Contract and any other agreements or contracts entered into by the Concessionaire with MMRDA or others relating to the Project during the subsistence of this Agreement;



"Project Assets" means all physical and other assets relating to and forming part of the MRTS Project including but not limited to (i) rights over the Site in the form of license and also over the Right of Way, (ii) tangible assets such as civil works including the foundation, station building, rolling stock, tracks, overhead steel /concrete structures, drainage works, lighting facilities, traffic signals, sign boards, equipment for the collection of fare, electrical works for lighting on the MRTS Project -telephone and other communication systems and equipment for the Project, rest - areas, administration and maintenance depots, relief canters, service facilities etc. (iii) Project Facilities situated on the Site (iv) the rights of the Concessionaire under the Project Agreements, (v) financial assets, such as security deposits for electricity supply, telephone etc. (vi) insurance proceeds and (vii) Applicable Permits and authorizations relating to or in respect of the MRTS Project, but does not include Additional Facilities (viii) administrative office and the residential property belonging to the Concessionaire;

"Project Completion" shall have the meaning ascribed thereto in Article 15;

"Project Completion Schedule" means the progressive Project milestone set forth in Schedule F for the realization of the MRTS Project complete in all respects by the Scheduled Project Completion Date and as may be modified with mutual agreement between the Parties;

"Project Facilities" means all the amenities and facilities situated on the Site, as described in Schedule C;



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"Provisional Completion Certificate" shall have the meaning ascribed thereto in Article 17.6.2;

"RBI" means the Reserve Bank of India as constituted and existing under the Reserve Bank of India Act, 1946 including any statutory modification or replacement thereof, and its successors etc;

"RFP" means the Request for Proposal document issued by MMRDA to the Bidders;

"Rider-ship" means the number of commuters using the MRTS system in a Day;

"Right of Way" means all way leaves, easements, unrestricted access and other rights of way, however described, necessary for construction, operation and maintenance of the MRTS Project in accordance with this Agreement;

"Rs." or "Rupees" means the lawful currency of the Republic of India;

"Safety Commissioner" means the Commissioner appointed by the Government of Maharashtra under the Indian Tramways (Bombay Amendment) Act, 1948;

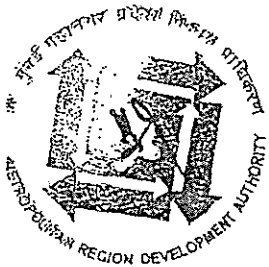
"SBI PLR" means the prime lending rate per annum for loans with 1 (one) year maturity as fixed from time to time by the State Bank of India, and in the absence of such rate, any other arrangement that substitutes such prime lending rate as mutually agreed between the Parties;

"Scheduled Project Completion Date" shall have the meaning set forth in Article 15.3;

"Scheduled Services" means the number of trains to be run by the Concessionaire on a particular Day as per the requirements set forth in Volume II of RFP (Technical and Performance Specifications);

"Senior Lenders" means the financial institutions/ non banking financial institution, banks, funds and agents or trustees of debenture holders or any other source, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting costs of all or any part of the Project and who hold pari passu charge on the Concession and the Project Assets (including Project cash flows) granted by this Agreement and have a right of substitution of the Concessionaire pursuant to the Substitution Agreement;

"Site" means the ROW, land leased by MMRDA for the car-depot, substation and access to stations and land allowed to be used temporarily for construction of elevated track-way, station



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buildings, stair cases in accordance with this agreement more particularly described in Schedule A;

"Shareholder's Agreement" means the Agreement referred in Recital F;

"State Support Agreement" means the agreement dated as executed between the Government of Maharashtra, MMRDA and the Concessionaire, a copy of which is attached in Schedule U.

"Statutory Auditors" means an independent, recognized and reputable firm of Chartered Accountants duly licensed to practice in India and appointed in accordance with Article 26;

"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of Subordinated debt as the case maybe, outstanding as on the Termination Date;

- (i) the principal amount of the subordinated debt provided by the Subordinate Lenders for financing the MRTS Project; and
- (ii) all accrued interest, financing fees and charges payable on or in respect of the debt referred to in sub-Article (i) above Up to the date preceding the Termination Date but excluding (a) any interest, fees or charges that had fallen due prior to the Termination Date and (b) penal interest or charges, payable under the Financing Documents to any Subordinate Lenders;



"Subordinate Lenders" means lenders who have provided Subordinate Debt for the MRTS Project;

"Substitution Agreement" means the agreement referred to in Article 33 and to be entered into among the Concessionaire, MMRDA and the Senior Lenders in the form set forth in Schedule P providing, inter alia, for the substitution of the Concessionaire by any other person subject to and in accordance with the provisions of this Agreement and the Substitution Agreement;

"Taxes" means any Indian taxes including corporate tax, withholding tax, sales tax works, contract tax, octroi, entry tax, value added tax, excise duties, customs duties and local taxes and any impost of like nature (whether, Central, State or local) whatsoever and whenever charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the MRTS Project, on the construction, operation, maintenance, ownership and transfer thereof and on the Project Assets, but excluding any rebate, interest, penalties and other sums in relation thereto imposed on any account whatsoever;



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"Termination" means the early termination of this Agreement and the Concession hereunder pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement, but shall not, unless the context otherwise requires, include the expiry of this Agreement and the Concession hereunder due to expiry of the Concession Period in the normal course;

"Termination Date" means the date on which this Agreement is terminated by a Termination Notice or otherwise terminates;

"Termination Notice" means the communication issued in accordance with this Agreement by any one Party to the other Party terminating this Agreement;

"Termination Payment" means the amounts payable to the Concessionaire by MMRDA under and in accordance with this Agreement and shall have meaning ascribed in Article 27.9;

"Tests" mean the tests to be carried out as set forth in and in accordance with Schedule H to determine the Project Completion for commencement of commercial operation of the MRTS and as stipulated by Safety Commissioner for its certification of safety;

"Total Project Cost" means the lowest of the following:

- (a) a sum of Rs. 23560 Million (Rupees Twenty Three Thousand Five Hundred Sixty Million only);
- or
- (b) actual capital cost of the Project upon completion of the MRTS Project as certified by the Statutory Auditors; or
- (c) total project cost as set forth in Financing Documents,

Provided that if part of the Total Project Cost is funded in foreign currency, in accordance with the Financing Package, then notwithstanding anything to the contrary contained herein, the rate of exchange shall be determined as on the date of disbursement under the Financing Document, and the Total Project Cost shall be computed as if such foreign currency were converted with reference to such exchange rate;

"Transfer Date" shall mean the date on which this Agreement and Concession hereunder expires on the Expiry Date or is terminated by a Termination Notice on the Termination Date, as the case maybe;

"Utilities" means any existing utilities on, along or under the Site that have been identified by Concessionaire, and, if required for the MRTS Project, relocated by the MMRDA, at its cost to a safe location, such that, in each case, the continued presence of such utilities does not affect the



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execution of the Project in accordance with the Project Completion Schedule or the O&M of the Project;

"Vesting Certificate" shall have the meaning attributed to it in Article 31.4;

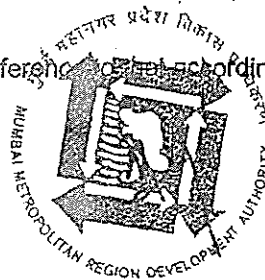
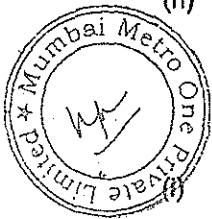
"WPI" means the wholesale price index published by the Ministry of Industry, GOI and shall include any index, which substitutes the WPI, and any reference to WPI shall, unless the context otherwise required, be construed as a reference to the WPI published for the period ending with the preceding month.

1.2 Interpretations

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in any State or Union Territory forming part of the Union of India;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity);
- (d) the headings are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;
- (e) terms and words beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein and the terms and words defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules;
- (f) the words "include" and "including" are to be construed without limitation;
- (g) references to "development" include, unless the context otherwise requires, investigation, finance, design, engineering, construction procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning, own and transfer and other activities incidental to the development;
- (h) references to operation and maintenance include unless the context otherwise requires running of train and provision of all allied services including routine maintenance, preventive maintenance, special repairs and replacement during Concession Period and the Additional Concession;

any reference to any period of time shall mean a reference to that according to local Indian Standard Time;



- (j) any reference to Day shall mean a reference to a calendar day;
- (k) any reference to month shall mean a reference to a calendar month;
- (l) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (m) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Article shall not operate so as to increase liabilities or obligations of MMRDA hereunder or pursuant hereto in any manner whatsoever;
- (n) references to Recitals, Articles, Sub-articles, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Sub-articles, paragraphs, and Schedules of or to this Agreement;
- (o) any agreement, consent, approval, authorization, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effectual only if it is in writing under the hands of duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (p) any reference to any period commencing "from" a specified Day or date and "till" or "until" a specified Day or date shall include both such Days or dates;
- (q) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Concessionaire to MMRDA and/or the Independent Engineer shall be provided free of cost and in three copies and if MMRDA and/or the Independent Engineer are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- (s) wherever consent is required, whether specified or not, it shall mean prior consent in writing.
- (t) all capitalized terms used in Articles 8.2, 8.7 and 30.4 which are not defined in this Agreement shall have the same meaning as ascribed to it in the Shareholders Agreement.



1.3 Measurements and Arithmetic Conventions

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

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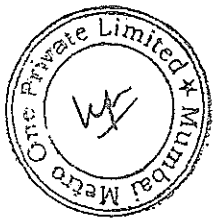
1.4 Priority of contract documents and errors / discrepancies

1.4.1 The several documents forming this Agreement are to be taken as mutually explanatory to one another and, unless otherwise expressly provided elsewhere in this Agreement, the priority of the following documents shall in the event of any conflict between them be in the order they are set out:

- (i) this Agreement;
- (ii) all other agreements and documents forming part hereof; i.e. document at (i) above shall prevail over the documents at (ii) above.

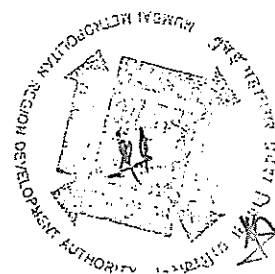
1.4.2 In case of ambiguities or discrepancies within this Agreement the following shall apply:

- (i) between two Articles of this Agreement, the provisions of the specific Article relevant to the issue under consideration shall prevail over those in other Articles;
- (ii) between the Articles and the Schedules, the Articles shall prevail save as otherwise expressly set forth in Article 1.4.1;
- (iii) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
- (iv) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (v) between any value written in numerals and that in words, the latter shall prevail.



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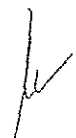
ARTICLE 2
SCOPE OF THE PROJECT

2.1 Scope of the Project

The Project shall include the design, construction, operation, maintenance, ownership and transfer of the MRTS. The Project shall be executed as described in Schedule A of this Agreement. The scope of the Project shall include performance and execution by the Concessionaire of all financing, design, engineering, procurement, construction, completion, commissioning, operation and maintenance of the MRTS Project as described in Schedule B and Schedule C of this Agreement. The Project shall conform to and be executed inter alia in accordance with the Specifications and Standards set forth in Schedule D and operation and maintenance thereof in accordance with Schedule J. The Project shall also include enjoyment of all rights and benefits available under this Agreement and the performance and fulfillment of other obligations by the Concessionaire in accordance with the provisions of this Agreement and matters thereto or necessary for performance of any or all of the obligations of the Concessionaire under this Agreement.



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ARTICLE 3
GRANT OF CONCESSION

3.1 The Concession

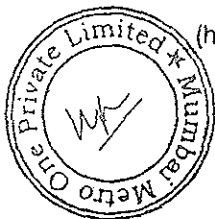
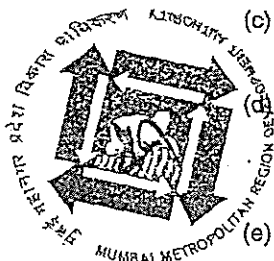
Subject to and in accordance with the terms and conditions set forth in this Agreement, the Applicable Laws and Applicable Permits MMRDA hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, develop, complete, commission, operate maintain, own and transfer the MRTS Project and to exercise and/or enjoy the rights, powers, privileges, authorizations and entitlements as set forth in this Agreement, including but not limited to the right to levy, demand, collect and appropriate Fare from commuters and persons liable to payment of Fare for using the MRTS Project or any part thereof and for undertaking Additional Concessions granted by MMRDA as specified in this Agreement (collectively "the Concession").

3.2 Concession Period

The Concession hereby granted is for a period of 35 years commencing from the Appointed Date (the "Concession Period") during which the Concessionaire is authorised to develop the Project and to operate and maintain Project Facility in accordance with the provisions of this Agreement, the Applicable laws and the Applicable Permits to undertake inter alia the following -

- (a) obtain right of way, access and license to the Site to the extent conferred by the provisions of this Agreement;
- (b) finance, develop, design, engineer, procure, construct, test, commission, operate, maintain own and transfer the MRTS project during Concession Period;
- (c) upon completion of the MRTS Project and during the Operations Period to manage, operate and maintain the MRTS Project and regulate the use thereof by third parties;
- (d) levy, demand, collect and appropriate the fares from commuters liable to payment of fares for using the MRTS Project or any part thereof and refuse entry of any commuter to the MRTS if the Fare is not paid;
- (e) impose fines, penalties on defaulting commuters and initiate any action against the same as per the powers given under the Indian Tramways Act, 1886 (Bombay Amendment 1948) and Applicable Law;
- (f) perform and fulfill all of the Concessionaire's obligations under this Agreement;
- (g) bear and pay all expenses, costs and charges incurred in the fulfillment of all the Concessionaire's obligations under this Agreement;
- (h) not assign or create any lien or encumbrance on the Concession hereby granted or

on the whole or any part of the MRTS project nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement or the Substitution



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Agreement;

- (i) not assign or create any lien or encumbrance on the land leased by MMRDA to the Concessionaire except as per the provisions of this Agreement;
- (j) Without prejudice to the aforesaid, MMRDA recognizes the exclusive right of the Concessionaire during the Concession Period to undertake the MRTS Project, in accordance with the terms and conditions of this Agreement and, to undertake Additional Concessions granted by MMRDA in accordance with Article 3.3.

3.3 Additional Concessions granted by MMRDA

3.3.1 The Concessionaire may use hoardings for advertising at

- a. MRTS station platforms
- b. MRTS station and sub-station buildings
- c. Elevators and staircases at the MRTS stations
- d. any other place upon the station building
- e. Car depot location
- f. Inside and outside MRTS coaches
- g. any vehicle as may be used for the MRTS Project.

not on barricades!

3.3.2 Concessionaire shall also be allowed to avail rights for advertisements on CCTV/PA system and advertisements on smart card type tickets.

3.3.3 The Concessionaire shall also be permitted to undertake Commercial Activities for Commuter facility on the concourse area at stations subject to a maximum of 100 square commuters per station.

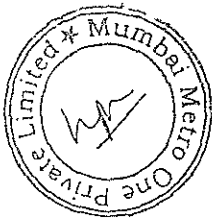
The Additional Concessions granted by MMRDA would be subject to all Applicable Laws and Applicable Permits. Subject to Applicable Law, the Concessionaire shall be free to fix the charges for the Commercial Activities and the Additional Concessions granted by MMRDA.

Acceptance of the Concession

The Concessionaire hereby accepts the Concession and agrees and undertakes to implement the MRTS Project and to perform/discharge all of its obligations in accordance with the terms and conditions set forth in this Agreement.

3.5 Concession Period

The Concession Period shall commence on the Appointed Date and shall end on the Expiry Date, provided that in the event of Termination, the Concession Period shall mean and be limited to the period commencing from the Appointed Date and ending with the Termination Date.



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ARTICLE 4
CONDITIONS PRECEDENT

4.1 Conditions Precedent

Save and except as provided in Articles 4, 5, 22 and 37, the rights and obligations of the Concessionaire under this Agreement are subject to the satisfaction in full of the conditions precedent specified in this Article 4.1. (the "Conditions Precedent"), to be fulfilled on or before Financial Close unless such condition has been waived as provided in Article 4.2:

- (a) The Concessionaire shall have obtained all such Applicable Permits/clearances, from the GOI/GOM with regard to implementation and operations of MRTS Project (save for any approvals or permits that are required from the Ministry of Railways/ Zonal Railways) unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;
- (b) The Concessionaire shall have been granted the following required in connection with the Project including:
- (i) Right of Way/Way Leaves for the alignment of the MRTS free from all Encumbrances;
- (ii) Permission / license to enter upon and utilise the Site for the construction pursuant to and in accordance with this Agreement;
- (c) Certified true copies of all Project Agreements, in particular the Financing Documents as well as the Shareholders Agreements have been delivered by the Concessionaire to MMRDA;
- (d) The Performance Security in full has been provided by the Concessionaire to MMRDA in accordance with Article 5;
- (e) The concessionaire shall have delivered to MMRDA confirmation of the correctness as on the appointed Date, of their representations and warranties set forth in Article 11 of this Agreement;



The Concessionaire shall have procured the execution of the Escrow Agreement;

The Concessionaire shall have procured the execution of the Substitution Agreement.

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4.2 Waiver of Conditions Precedent

Save and except any of the Conditions Precedent set forth in Article 4.1 (b) and (c), may be waived fully or partially by MMRDA at anytime in its sole discretion.

4.3 Obligation to satisfy the Conditions Precedent

The Concessionaire shall make all reasonable endeavours to procure the satisfaction in full of the Conditions Precedent set out in Article 4.1 except in Sub-Articles 4.1 (b) and (c). MMRDA shall make all reasonable endeavours to procure fulfillment of the conditions set forth in Sub-Articles 4.1 (b). Each Party shall bear its respective cost and expense of satisfying such Condition Precedent.

4.4 Non-fulfillment of Conditions Precedent

If the Conditions Precedent set forth in Article 4.1 except in Sub-Articles 4.1 (b) and (c) have not been satisfied on or before the Financial Close and MMRDA has not waived, fully or partially, such conditions under Article 4.2, MMRDA may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement by giving a 30 (thirty) Days notice, without being liable in any manner whatsoever to the Concessionaire and forfeit the Bid Security and/or the Performance Security by way of Damages. If MMRDA does not meet its Conditions Precedent set forth in Sub-Articles 4.1 (b) it shall be entitled to extend the date for meeting such Conditions Precedent up to a period not exceeding 180 Days. On such delay in meeting Conditions Precedent by MMRDA, it shall extend the date for achieving Financial Close and the Concession Period by a period equal in length to such delay. If MMRDA is not able to meet its Conditions Precedent even after such extension, MMRDA and the Concessionaire shall mutually decide to either provide any further extension to MMRDA or mutually agree to terminate this Agreement. Upon such termination of the Agreement under this Article 4.4, MMRDA shall refund in full Bid Security or the Performance Security, as the case may be and reimburse costs incurred by the Concessionaire and as certified by the Statutory Auditor and recommended by the Independent Engineer.

4.5 Inordinate delay by GOI/ GOM in granting applicable permits

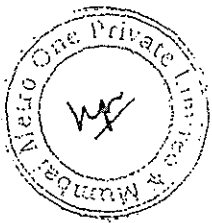
If the GOI/ GOM inordinately delay, to the concessionaire the applicable permits, and such delay causes a Material Adverse Effect on the project then provided the Concessionaire has complied with all conditions required of it to obtain the applicable permits and provided the concessionaire has complied with this Agreement and Applicable Law then in such an event MMRDA shall not terminate this Agreement for non-fulfillment of the Conditions Precedent in Article 4.1 (a) by the Concessionaire. In addition, MMRDA shall grant an extension of time as it may deem fit including extension of the Concession Period.



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4.6 Notification of Progress

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



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ARTICLE 5 PERFORMANCE SECURITY

5.1 Performance Security

The Concessionaire shall, for due and faithful performance of its obligations during the Concession Period, provide to MMRDA a bank guarantee from any Bank in the form set forth in Schedule E (the "Performance Security") for a sum equivalent to Rs. 140 million (Rupees one hundred and forty million) in two lots of 50% each of Rs.70 million, within 120 (one hundred twenty) Days of the date of this Agreement. Till such time the Concessionaire provides to MMRDA the Performance Security pursuant hereto, the Bid Security shall remain in full force and effect. The same shall be renewed from time to time. Failure of the Concessionaire to provide the Performance Security in accordance with this Article 5.1, shall entitle MMRDA to terminate this Agreement in accordance with the provisions of Article 30 without being liable in any manner whatsoever to the Concessionaire and to appropriate the Bid Security.

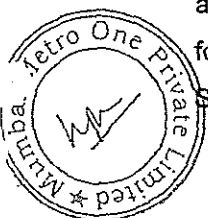
5.2 Release of Performance Security

The Performance Security Guarantee to the extent of Rs.70 million being 50% (fifty percent) representing first lot shall be released by MMRDA to the Concessionaire 12 months after issue of Completion Certificate and the balance Rs.70 million being 50% (fifty percent) representing second lot will be released 12 (twelve) months after completion of the Concession Period. The Performance Security shall also be released by MMRDA to the Concessionaire in the event this Agreement is terminated on account of an MMRDA Event of Default.

5.3 Appropriation of Performance Security

In the event of the Concessionaire being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period, MMRDA shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the relevant amount under the Performance Security for such default. Upon such encashment and appropriation of relevant amounts under the Performance Security, MMRDA shall grant a period of 30 (thirty) Days to the Concessionaire to provide fresh Performance Security and the Concessionaire shall within the time so granted replenish or furnish to MMRDA such Performance Security as aforesaid failing which MMRDA shall be entitled to Terminate this Agreement in accordance with Article 30

and appropriate the balance amount, if any, under the Performance Security. The provision set forth in Article 5.2 and this Article 5.3 shall apply mutatis-mutandis to such fresh Performance Security.



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5.4 **Fresh Performance Security**

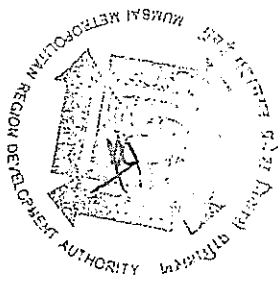
Notwithstanding anything to the contrary contained in Article 5.3, upon furnishing of fresh Performance Security in accordance with Article 5.3, the Concessionaire shall be granted an additional period of 60 (sixty) Days as Cure Period for remedying the defaults and complying with its obligations under this Agreement. In the event of the Concessionaire continuing to be in breach of the provisions of this Agreement after such Cure Period, MMRDA shall be entitled to terminate this Agreement under the provisions of Article 30.



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ARTICLE 6

LEVY, COLLECTION AND APPROPRIATION OF FARE

- 6.1 The Concessionaire shall be entitled during the Operations Period to levy, collect the Fare from the users of the MRTS Project pursuant to and in accordance with the Fare Schedule set forth in Schedule L and in accordance with Article 6.5 of this Agreement.
- 6.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Fare or other relief from MMRDA or any Governmental Agency except in accordance with the express provisions of this Agreement.
- 6.3 The Fares collected by the Concessionaire shall be deposited in the Escrow Account and appropriated in accordance with the provisions of Article 24.
- 6.4 The Concessionaire may delegate its right to the O&M Contractor provided, that notwithstanding such delegation, the Concessionaire shall be and remain solely liable and responsible for the collection of Fares and its deposition into the Escrow Account in accordance with this Agreement.
- 6.5 **Revision of Fare**
 - 6.5.1 The regulation and revision of Fare may be done in such manner as detailed in Schedule L annexed to this Agreement.
 - 6.5.2 The Concessionaire may approach the Government of Maharashtra for any upward revision of the Fare beyond those permitted in the Fare Notification in the event of any unanticipated rise in the operating cost of the MRTS Project.



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ARTICLE 7
NO PARALLEL COMPETING FACILITY
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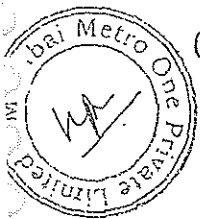
ARTICLE 8
OBLIGATIONS OF THE CONCESSIONAIRE



8.1 Obligations of the Concessionaire

The Concessionaire shall at its own cost and expense observe, undertake, comply with and perform, in addition to and not in derogation of its obligations elsewhere set out in this Agreement, the following:

- (i) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove encroachments, if any;
- (ii) Procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the MRTS Project;
- (iii) Make or cause to be made necessary applications to the relevant Governmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Permits and obtain such Applicable Permits in conformity with the Applicable Laws save that the Concessionaire shall not be considered in breach of this condition if it has complied with all conditions required to obtain the Applicable Permits and is in compliance with Applicable Law but the Governmental Agencies have inordinately delayed the grant of such Applicable Permits;
- (iv) Notify to MMRDA forthwith the occurrence of Financial Close;
- (v) Provide to MMRDA reports on regular basis during the Construction Period and the Operations Period in the form and manner set forth in this Agreement and Schedule R;
- (vi) Make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;
- (vii) Obtain and maintain in force during the Construction Period and Operations Period all insurance in accordance with the provisions of this Agreement and Good Industry Practice;
- (viii) Liaise with Railways and any other agency concerned with construction;
- (ix) Develop, implement and administer a surveillance and safety program for the MRTS Project, the users thereof, and the Contractors personnel engaged in the provision of any



services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to provide a safe environment in accordance with Schedule D, Schedule J, Applicable Laws and Good Industry Practice;

(x) Comply with all Applicable Permits and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the Contractors;

(xi) Remove promptly from the MRTS Project Site all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition in accordance with specifications and standard Good Industry Practice and in conformity with the Applicable Laws and Applicable Permits;

(xii) Perform and fulfill its obligations including undertaking Debt Service Payments in accordance with the Financing Documents;

(xiii) Levy and collect Fares from users of the MRTS Project at the rates in accordance with this Agreement and regulate the traffic on the MRTS Project in accordance with the Applicable Laws;

(xiv) Provide security for property and personnel;

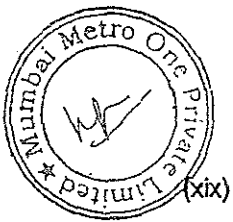
(xv) Take all reasonable precautions for the prevention of accidents on or about the MRTS Project and provide all reasonable assistance and emergency medical aid to accident victims;

(xvi) Be responsible for safety, soundness and durability of the MRTS Project including other structures forming part thereof and their compliance with the Specifications and Standards;

(xvii) Make payment to police department or any Government agency, if required, for provision of such services as are not provided in the normal course or are available on payment;

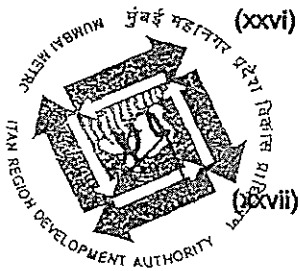
(xviii) Indemnify MMRDA against all actions, suits, claims, demands and proceedings and any loss or damage or cost or expense that may be suffered by them on account of anything done or omitted to be done by the Concessionaire in connection with the performance of its obligations under this Agreement during and on cessation of Concession Agreement;

(xix) Comply with the Divestment Requirements and hand over the MRTS Project to MMRDA



upon Expiry of Concession;

- (xx) It shall furnish a copy of the annual audited accounts of the Company within 30 (Thirty) Days of finalization as per Applicable Laws and any material change subsequent to the date of such accounts shall be notified to MMRDA by the Concessionaire within 30 (thirty) Days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (xxi) Pay regularly lease rent for the land provided by MMRDA;
- (xxii) Not enter in any lease agreement for commercial stalls, or O & M activities for a period beyond Concession Agreement;
- (xxiii) Not place or create and nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;
- (xxiv) The Concessionaire shall appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (xxv) Provide all assistance to the Independent Engineer as it may require for the performance of its duties and services;
- (xxvi) Except with the prior approval of MMRDA, the Concessionaire shall not undertake any activity other than that required for the performance of its obligations and rights under this Agreement;
- (xxvii) Obtain an approval of the traffic diversion plan proposed during the Construction Period from the traffic police;
- (xxviii) Recruit, train and employ staff for O & M;
- (xxix) Concessionaire shall procure approval of the Railway authorities / Zonal railway in the form of a General Arrangement Drawing to enable the Concessionaire to construct and operate the MRTS project over the railway line crossings;
- (xxx) Upon the Termination of this Agreement, the Concessionaire shall cooperate and handover to MMRDA ownership, possession and control of the Project Assets in a smooth manner



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and to this end will provide all the reasonable assistance, and information that MMRDA shall require.

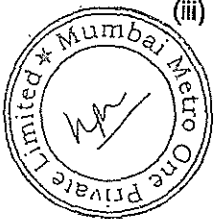
8.2 Obligations related to the Project Agreements

In respect of the Concessionaire's obligations with respect to the Project Agreements of the MRTS Project, the following shall apply:

- (i) The Concessionaire shall submit to MMRDA the drafts of the EPC Contract and Operations Agreement for its review and comments. The Concessionaire shall submit to MMRDA the drafts of all the other Project Agreements (excluding EPC Contract and Operations Agreement) including all agreements relating to the procurement of rolling stock, and the Financing Documents for its approval. In the event the draft of any agreement relating to the procurement of rolling stock is disapproved by MMRDA and the Concessionaire does not concur with such disapproval, then the decision on such matter will be taken by the Board of Directors of the Concessionaire in consonance with the recommendation of a three (3) member independent committee that is formed by the Preferred Bidder and MMRDA. MMRDA shall have the right in respect of these draft Project Agreements submitted to it for its approval, but not the obligation to provide its comments and observations, if any, in respect of the Project Agreements within 30 (thirty) Days of the receipt thereof by MMRDA and the Concessionaire shall consider and respond to all such comments/observations within a period of 30 Days. Any such comments/observations by MMRDA on any Project Agreements or the failure to provide such comments shall not relieve or absolve in any manner whatsoever the Concessionaire of its obligations, duties and liabilities under this Agreement nor shall it make MMRDA and/or Independent Engineer liable to the Concessionaire in any manner whatsoever and shall be without prejudice to the rights of MMRDA hereunder.

Subject to (i) above, should MMRDA not respond to the drafts of the Project Agreements within the period of 30 Days, it shall be deemed that MMRDA has no objection to the drafts of the Project Agreements and it shall be deemed that MMRDA has given its approval to the Concessionaire to enter into these Project Agreements.

- (ii) The Concessionaire shall submit to MMRDA certified true copies of each of the approved Project Agreements within 7 (seven) Days of their execution.
- (iii) The Concessionaire shall not make any replacement, amendment or modifications to any of the Project Agreements and Financing Package without the prior written consent of MMRDA, where such replacement, amendment or modification has or may have the effect of increasing or imposing any financial liability or obligation on MMRDA in any manner.



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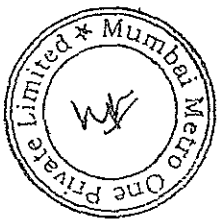
Where such amendment or modification is made without such consent, the Concessionaire shall ensure and procure that no such amendment / modification will be enforced against or to MMRDA's detriment in any manner whatsoever.

- (iv) The Concessionaire shall ensure and procure that each Project Agreement, excluding Financing Documents, contains provisions that entitle MMRDA to step into such agreement in place and substitution of the Concessionaire in the event of Termination of this Agreement on account of default or breach by the Concessionaire. However, MMRDA shall only step into all such agreements in place and substitution of the Concessionaire provided;
- (a) MMRDA has no liability whatsoever in respect of acts or omissions of the Concessionaire or for any period prior to its stepping in;
 - (b) MMRDA has all the benefits of the contract that were available to the Concessionaire prior to MMRDA stepping in;
 - (c) The contract has not been the cause of/resulted in a Concessionaire Event of Default.

8.3 Maintenance of Site

Since the alignment passes through the congested busy roads during the Construction Period, the Concessionaire shall be responsible for maintaining the Site at its own cost and expense, if any activity of the Concessionaire or its Contractors causes any damage then, the Concessionaire shall promptly undertake all such repairs and maintenance works as may be necessary to keep the Project Site road portion traffic-worthy and safe during the Construction Period. .

The Parties agree that for the purpose of proper upkeep and maintenance of the Site including Right of Way/Way Leaves below the viaduct (median portion) and to ensure that there are no encroachments, the Concessionaire shall have the right to develop gardens/green belt and maintain the same at its own cost subject to obtaining necessary clearances under the Applicable Law.



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8.4 Obligations prior to commencement of construction of the MRTS Project

The Concessionaire shall, before commencement of construction of the MRTS Project or any part thereof:

- (i) submit to MMRDA with due regard to Project Completion Schedule as set forth in Schedule F and Scheduled Project Completion Date, its design, engineering and construction time schedule and shall formulate and provide CPM/PERT charts for the completion of the said activities;
- (ii) finalise the design including the checking approval, of the Independent Engineer for any part or parts of the Works;
- (iii) have requisite organisation and designate and appoint a Project Manager and such other managers, officers and representatives as it may deem appropriate to supervise the Project and to deal with the MMRDA Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement and
- (iv) undertake, do and perform such acts, deeds and things as may be necessary or required for construction and Project Completion under and in accordance with this Agreement.

8.5 Obligations of the Concessionaire related to Drawings

In respect of the Concessionaire's obligations with respect to the Drawings of the MRTS Project, the following shall apply:

- (i) The Concessionaire shall prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to MMRDA and the Independent Engineer.

By forwarding the Drawings and Specifications to the Independent Engineer and MMRDA, the Concessionaire represents that it has determined and verified that the design specifications and engineering including field construction criteria related thereto is in conformity with the Performance Specifications and Standards and quality set forth in this Agreement for and in respect of the MRTS Project.

- (iii) Within 30 (thirty) Days of the receipt of the Drawings and Specifications, the Independent Engineer shall review the same and convey its approval to the Concessionaire with particular reference to the conformity or otherwise with the Performance Specifications and Standards set forth in this Agreement and MMRDA shall review the same and convey its



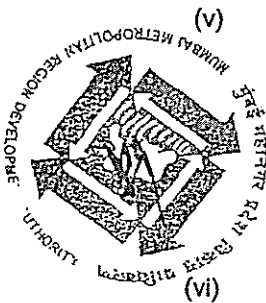
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comments / observation to the Independent Engineer for consideration. It is expressly agreed that notwithstanding any approval/review and comment/ observations of the Independent Engineer/ MMRDA on any Drawings and Specifications or failure of the Independent Engineer/ MMRDA to provide comments/observations thereon, the Independent Engineer/ MMRDA shall not be liable for the same in any manner whatsoever and the Concessionaire shall remain solely responsible for and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.

- (iv) If the comments/observations of the Independent Engineer/ MMRDA indicate that the Drawings and Specifications are not in conformity with the Specifications and Standards set forth in this Agreement, such Drawings and Specifications shall be revised by the Concessionaire to the extent necessary and resubmitted to the Independent Engineer / MMRDA for approval, review, observations and comments. The Independent Engineer shall give its observations and comments, if any, within 15 (fifteen) Days of the receipt of such revised Drawings and Specifications. Provided, however, that any observations or comments of the Independent Engineer or failure of the Independent Engineer to give any observations or comments on such revised drawings shall not relieve or absolve the Concessionaire of its obligation to conform to such Performance Specifications and Standards.



- (v) The Concessionaire shall be responsible for delays in Project Completion Schedule caused by reasons of any Drawings and Specifications not being in conformity with the Specifications and Standards, and the Concession Period shall not be extended in any manner whatsoever on account of submission or revision of any Drawings and Specifications.

- (vi) Within 180 (One hundred eighty) Days of the COD, the Concessionaire shall furnish MMRDA with "as built" Drawings and Specifications reflecting the MRTS Project as actually designed, engineered and constructed.

- (vii) Concessionaire shall submit operating and maintenance manuals to the MMRDA for review and Independent Engineer for approval before commencement of Operation and Maintenance.

8.6 Obligations of Concessionaire related to lock-in conditions

- (a) The aggregate equity share holding of the Consortium Members in the issued and paid up equity share capital of the Concessionaire shall not be less than 51% (fifty one percent)



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during the Construction Period and for a minimum period of 2 years following COD.

- (b) The equity share holding of the Lead Consortium Member in the issued and paid up equity share capital of the Concessionaire shall not be less than 26% (twenty six percent) of the total issued and paid up equity share capital for a minimum period of 15 years following COD.
- (c) The holding of each Consortium Member other than Lead Consortium Member in the issued and paid up equity share capital of the Concessionaire shall not be less than 5% (five percent) of the total issued and paid up equity share capital for a minimum period of 2 years following COD.

8.7 The Parties agree that the Concessionaire shall ensure that the Concessionaire remains a private company and does not become a subsidiary of a public company within the meaning of the Companies Act, 1956 so long as -

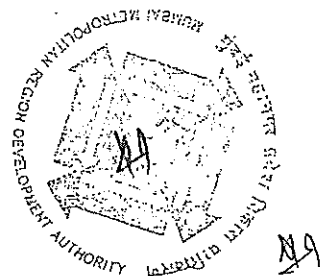
- (a) MMRDA holds more than 10% shareholding interest in the SPV; and
- (b) the Applicable Law prevents MMRDA and/or the Preferred Bidder from enjoying its rights available under the Shareholders Agreement by reason of the Concessionaire becoming a public company or a subsidiary of a public company.



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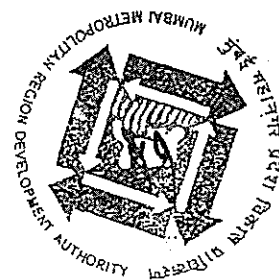
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ARTICLE 9
OBLIGATIONS OF MMRDA



9.1 Obligations of MMRDA

MMRDA agrees to observe, comply and perform the following:

- (i) enable access to the Site, free from Encumbrances, in accordance with this Agreement and in particular in accordance with Schedule A;
- (ii) permit peaceful use of the Site by the Concessionaire under and in accordance with the provisions of this Agreement without any let or hindrance from MMRDA or persons claiming through or under it,
- (iii) subject to the Concessionaire complying with Applicable Laws, assist the Concessionaire in procuring Applicable Permits;
- (iv) subject to the Concessionaire complying with the Applicable Laws, assist the Concessionaire to get the necessary statutory clearances;
- (v) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favorable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (vi) provide necessary space / land for car depot , electric sub stations and access to station as per approved plans on nominal lease charge of Rs. 1 (Rupee one) per square meter per annum free from all encumbrances, relocate and rehabilitate all affected persons as per applicable law / policy of the GOM.
- (vii) render assistance to the Concessionaire in obtaining necessary permissions, from various Government departments, Governmental Agencies and Local Authority for security/traffic regulations, building permission for building structures during Concession Period;
- (viii) to carry out shifting of under ground, surface and overhead Utilities (if required) itself or through concerned agency or through the Concessionaire and reimburse the cost.
- (ix) assist the Concessionaire in the co-ordination with transport agencies such as BEST, auto rickshaw and taxies, liaison with MCGM, highway authorities and traffic authority as regards temporary and permanent traffic diversion;
- (x) provide 26% of the total issued and paid up equity capital towards meeting the Total Project Cost as per agreement;
- (xi) appoint Independent Engineer in accordance with Article 20;
- (xii) arrange and ensure appointment of Safety Commissioner / engineer by GOM in accordance with Indian Tramways Act, 1886 (Bombay Amendment, 1948);
- (xiii) assist the Concessionaire in obtaining police assistance from GOM against payment

of prescribed costs and charges, if any, for patrolling and provision of security on the



MRTS;

- (xiv) procure that no barriers are erected or placed by GOM or any Governmental Agency on the MRTS Project except on account of any law and order situation or upon national security considerations;
- (xv) provide the Capital Contribution to the Concessionaire in accordance with the provisions of Article 23;
- (xvi) reimburse costs for items in 9.1 (viii) and 4.4 and as per the provision of the agreement incurred by the Concessionaire and as certified by the Statutory Auditor and recommended by the Independent Engineer
- (xvii) observe and comply with its obligations set forth in this Agreement.



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ARTICLE 10
HIGH LEVEL STEERING COMMITTEE

10.1 High Level Steering Committee

Government of Maharashtra vide its Government Resolution No. MUT 1004/64/CR-6/2004/UD-7 dated 1st November 2004 has constituted a High Level Steering Committee for ensuring speedy clearances and approvals for the MRTS Project.

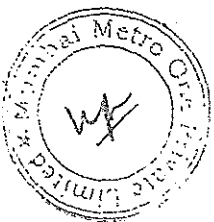
10.2 Constitution

The High Level Steering committee has been constituted with the following representatives

- (i) The Chief Secretary, GOM;
- (ii) Principal Secretary Urban Development Department, GOM;
- (iii) Metropolitan Commissioner, MMRDA;
- (iv) Municipal Commissioner, MCGM;
- (v) Vice Chairman and Managing Director, CIDCO;
- (vi) Chief Transport Planning Manager, Central Railway;
- (vii) Chief Transportation Planning Manager, Western Railway;
- (viii) General Manager, BEST;
- (ix) Joint Commissioner of Police (Traffic); and
- (x) Chief T&C, MMRDA.

10.3 Functions

- (i) The High Level Steering Committee shall hold regular meetings to review the progress of implementation of MRTS Project and give guidance to MMRDA and the Concessionaire on various issues.
- (ii) The High Level Steering Committee shall assist in ensuring the necessary clearances from concerned authorities / agencies for timely implementation of the MRTS Project.



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ARTICLE 11
REPRESENTATION AND WARRANTIES

11.1 Representations and Warranties of the Concessionaire

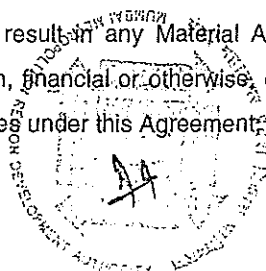
The Concessionaire represents and warrants to MMRDA that:

- (i) it is duly organized, validly existing and in good standing under the laws of India
- (ii) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (iii) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- (iv) it has the financial standing and capacity to undertake the Project
- (v) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (vi) it is subject to all Applicable Laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect thereof;
- (vii) all the information furnished in the Bid is, and shall be, true and correct, as on the Appointed Date and COD and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Appointed Date furnished to MMRDA shall give true and fair view of the affairs of the Concessionaire;
- (viii) it shall furnish a copy of the annual audited accounts of the Company within 30 (Thirty) Days of its finalization as per Applicable Law and any material change subsequent to the date of such accounts shall be notified to MMRDA by the Concessionaire within 30 (Thirty) Days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (ix) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or Shareholders Agreement 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 is bound or affected;
- (x) there are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of or constitute a default of the Concessionaire under this Agreement or which individually or in the aggregate may result in any Material Adverse Effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations and duties under this Agreement.



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- (xi) 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 Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (xii) 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 which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (xiii) each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested MMRDA to enter into this Agreement with the Concessionaire pursuant to the LOI and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (xiv) all rights and interests of the Concessionaire in and to the MRTS Project shall pass to and vest in MMRDA on the Transfer Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Concessionaire or MMRDA and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
- (xv) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to MMRDA, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (xvi) it warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of MMRDA, GOI or GOM in connection therewith.

11.2 Subject to the terms and conditions of this Agreement, the Concessionaire shall at its cost and expense:

- (i) undertake the financing, design, engineering, procurement and construction of the MRTS Project in accordance with this Agreement;
- (ii) operate and maintain the MRTS Project at all times in conformity with this Agreement including but not limited to the Performance Specifications and Standards set forth in Schedule D, Schedule J, the Maintenance Programme and Good Industry Practice.



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11.3 Representations and Warranties of MMRDA

MMRDA represents and warrants to the Concessionaire that:

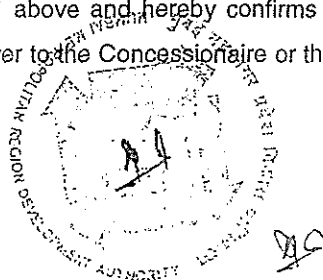
- (i) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (ii) it has taken all necessary action to authorise the execution, delivery and performance of this Agreement;
- (iii) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (iv) MMRDA is subject to all Applicable Laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement;
- (v) it shall provide 26% of the issued and the paid up equity share capital of the Concessionaire, towards meeting the Total Project Cost;
- (vi) there are no actions, suits, proceedings pending to its knowledge, the outcome of which may result in the breach of or constitute a default of MMRDA under this Agreement;
- (vii) it has no knowledge of any violation or default with respect to any order, writ, injunction or any legally binding order which may result in any Material Adverse Effect on MMRDA's ability to perform its obligations and duties under this agreement;
- (viii) it has complied with all Applicable Laws and has not been subject to any fines, penalties which may have material adverse effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (ix) it has the financial standing and capacity to perform its obligations under the Agreement;
- (x) all information provided by MMRDA in the bid documents in connection with the Project is to the best of its knowledge and belief true and accurate in all material respects.

11-A.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has adequately made an independent evaluation of the traffic volumes, Specifications and Standards, Site and all the information provided by MMRDA and has adequately assessed to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by the Concessionaire in the course of performance of its obligations hereunder.

11-A.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article XI-A.1 above and hereby confirms that MMRDA shall not be liable for the same in any manner whatsoever to the Concessionaire or the Consortium Members.

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ARTICLE 12
STATE SUPPORT AGREEMENT

12.1 State Support Agreement

The Concessionaire acknowledges that for the performance of its obligations under this Agreement, it requires support and certain services from GOM. The GOM has provided for the nature and scope of such support and services that shall be provided by the GOM to the Concessionaire in terms of the State Support Agreement. An executed copy of the State Support Agreement is attached in Schedule U to this Agreement.



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ARTICLE 13
USE AND DEVELOPMENT OF SITE

13.1 MMRDA hereby grants to the Concessionaire access to the Site for carrying out such surveys, investigations and soil tests as the Concessionaire may deem necessary and if the Concessionaire deems appropriate to commence construction of the MRTS Project at the Concessionaire's cost, expense and risk and take all necessary actions and approvals to regulate traffic on the existing corridor of the Project.

13.2 MMRDA hereby grants to the Concessionaire for the Concession Period the right and licence to enter upon the Site as briefly described in Schedule A and to survey design, engineer, procure, construct, operate and maintain the MRTS Project including the Project Facilities in accordance with the provisions of this Agreement. Such right and license of the Concessionaire to the use of the Site shall be subject to:

- (i) Any existing utilities on, under or above the Site are kept in continuous satisfactory use. (For the avoidance of doubt this condition is only meant to apply to those utilities that are likely to be affected for the execution of the Works during the construction period.)
- (ii) Intentionally left blank
- (iii) A right of access to MMRDA itself and any of its agents to perform their obligations and rights under the Concession Agreement or any other functions that they have, and to conduct any study or trial for the purpose of research.

13.3 The license and the right to use the Site shall be granted for the purpose of carrying out the functions placed upon the Concessionaire under the Agreement and not for any other purposes; Concessionaire shall pay the lease rent as per this Agreement.

13.4 Site to be free from Encumbrances

The Site shall be made available to the Concessionaire pursuant hereto by MMRDA free from all Encumbrances, after diversion of all utilities and free from all occupations and without the Concessionaire being required to make any payment to MMRDA on account of any costs, expenses and charges for the use of such Site for the duration of the Concession Period save and except as otherwise expressly provided in this Agreement. MMRDA shall procure for the Concessionaire access to the Site, free of Encumbrances, not later than 180 (one hundred eighty) Days from the date of this Agreement and in accordance with the land delivery schedule (the "Land Delivery Schedule") set forth at Annexure II of Schedule A.

Provided, however, that if MMRDA does not enable such access to any part or parts of the Site for



any reason other than a Force Majeure Event or breach of this Agreement by the Concessionaire, MMRDA shall extend the Scheduled Project Completion Date and the Concession Period by such period as determined by the Independent Engineer to compensate the Concessionaire.

13.5 On or after the Appointed Date, the Concessionaire shall commence, undertake and complete all Construction Works on the MRTS Project in accordance with this Agreement.

13.6 Damages for delay in achieving project milestones

The development of MRTS Project shall be undertaken by the Concessionaire in conformity with the Project Completion Schedule F and the project milestones set forth in Schedule F for completion of the MRTS Project on or before the Scheduled Project Completion Date. If the Concessionaire fails to achieve any such Project milestone other than Project Completion, within a period of 30 (thirty) Days from the date set forth in Schedule F, it shall pay Damages to MMRDA at the rate Rs 2 million per Day until such milestone is achieved. Without prejudice to its rights MMRDA may revise the project milestones in such manner that the Scheduled Project Commission Date does not change as agreed in this Agreement if the Concessionaire so requests. The Concessionaire shall make such payment within 30 (thirty) Days of receiving such demand from MMRDA and any delay in making such payment shall attract interest @ SBI PLR plus two per cent. If the Concessionaire fails to achieve Project completion as per the Scheduled Project Completion Date as set forth in Schedule F, then it shall pay damages to MMRDA as per Article 15. However, aforesaid damages charged from the Concessionaire would be refunded (without interest) within 30 (thirty) Days of COD, if the Project completion is as per schedule.

13.7 Land / Site delivery schedule

Land for the MRTS Project as mentioned in the Schedule A shall be provided by MMRDA in accordance with the Article 13.4. In case of any delay on part of MMRDA in providing the land as per the Land Delivery Schedule, respective date for Financial Close, Project Completion Schedule and Concession Period shall be extended by such period by MMRDA in proportion to such period of delay as may be determined by Independent Engineer.



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ARTICLE 14
MONITORING AND SUPERVISION OF CONSTRUCTION

14.1 Monthly Progress Reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) Days after the close of each month, furnish to MMRDA and the Independent Engineer monthly reports on the progress of the Construction Works and shall give all such other relevant information as may be required by MMRDA and/or the Independent Engineer.

14.2 Inspection

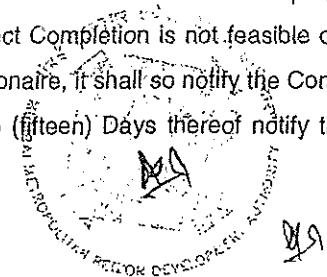
The Independent Engineer shall inspect the Construction Works of the MRTS Project once a month during the Construction Period and make out an Inspection Report of such inspection (the "Inspection Report"), stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. He shall send a copy of its Inspection Report to MMRDA and the Concessionaire within 7 (seven) Days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire

14.3 Quality assurance system

For the purposes of determining that Construction Works are being undertaken in accordance with Performance Specifications and Standards and Good Industry Practice, the Independent Engineer shall monitor and audit the Concessionaire's adherence to the quality assurance system (Schedule H). Reports on such audits will be provided to MMRDA and the Concessionaire. The Concessionaire must rectify at its own cost any defects in the quality assurance implementation identified by the Independent Engineer. If such defects in the Quality Assurance System are not rectified within a reasonable time, MMRDA reserves the right to appoint a supervisory engineer at the sole cost of the Concessionaire.

14.4 Delays during construction

If the Independent Engineer or MMRDA shall reasonably determine that the rate of progress of the Construction of the MRTS Project is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date by the Concessionaire, it shall so notify the Concessionaire about the same and the Concessionaire shall within 15 (fifteen) Days thereof notify the MMRDA



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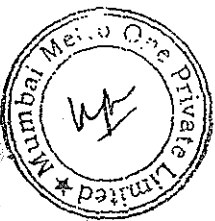
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and the Independent Engineer about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

14.5 Suspension of unsafe Construction Works

- (a) Upon recommendation of the Independent Engineer, MMRDA may by written notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if in the reasonable opinion of the Independent Engineer such work is being carried on in a manner which threatens the safety of the works or of the users of the MRTS Project.
- (b) The Concessionaire, shall upon instructions of the MMRDA pursuant to Sub-Article (a) above, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by MMRDA and subject to Sub-Article (c) below, the costs incurred during such suspension to properly protect and secure the Construction Works or such part thereof as is necessary in the opinion of the Independent Engineer ("Preservation Costs"), shall be borne by the Concessionaire.
- (c) If the suspension pursuant to Sub-Article (a) above, is caused by:
- (i) any reason other than default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement, the Preservation Costs shall be borne by MMRDA;
 - (ii) reason of default or breach of this Agreement by MMRDA, the Preservation Costs shall be borne by MMRDA; or
 - (iii) reason of any Force Majeure Event, the Preservation Costs shall be borne by the Concessionaire save and except to the extent otherwise expressly provided in Article 27.
- (d) If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine extension to the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period, to which the Concessionaire is reasonably entitled and shall notify MMRDA accordingly. MMRDA shall extend the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period in accordance with the recommendations of the Independent Engineer.



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**ARTICLE 15
COMPLETION**

15.1 Completion

The Project shall be deemed to be complete and open to traffic only when the Completion Certificate or the Provisional Completion Certificate is issued in accordance with the provisions of Article 17.6.

15.2 Commercial Operation Date (COD)

The Commercial Operation Date (COD) of the Project shall be the date on which the Independent Engineer has issued the Completion Certificate or the Provisional Completion Certificate, as the case may be and the Concessionaire shall not levy and collect any Fare until it has received such Completion Certificate or Provisional Completion Certificate.

15.3 Scheduled Project Completion Date

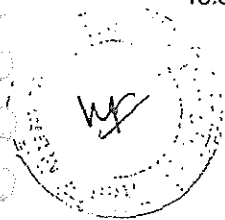
The Concessionaire guarantees that the Project Completion shall be achieved in accordance with the provisions of this Agreement on a date not later than 60 months from the Appointed Date ("Scheduled Project Completion Date") or on any extended date under this Agreement.

15.4 Damages for delay

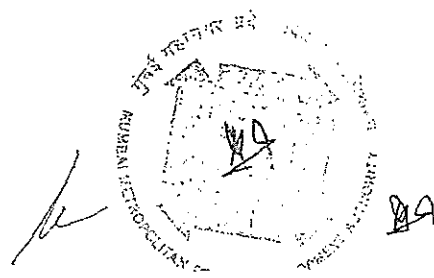
If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than conditions constituting Force Majeure or for reasons not attributable to MMRDA or any Governmental Agency, the Concessionaire shall pay to MMRDA as weekly Damages for delay in the achievement of the COD, an amount calculated at the rate of Rs.2.0 million per Day or part thereof.

15.5 Termination due to delay

If the COD does not occur within 180 (one hundred eighty) Days from the Scheduled Project Completion Date, unless the delay is on account of the reasons solely attributable to MMRDA or any Governmental Agency or due to Force Majeure, MMRDA shall be entitled to Terminate this Agreement in accordance with the provisions of Article 30.



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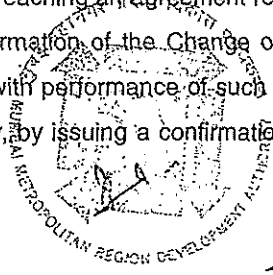
ARTICLE 16
CHANGE OF SCOPE

16.1 Change of Scope

MMRDA may, notwithstanding anything to the contrary contained in this Agreement, require provision of such additional works and services on or about the MRTS Project which are beyond the scope of the Project as contemplated by this Agreement ("Change of Scope"). All such changes shall be made by MMRDA by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in this Article 16 and giving consideration to O&M and lifecycle costs. The cost thereof shall be expended by the Concessionaire and reimbursed to it by MMRDA in accordance with this Article 16.

16.2 Procedure for Change of Scope

- (a) MMRDA shall whenever it desires provision of additional works and services referred to in Article 16.1, issue to the Concessionaire a notice of change of scope (the "Change of Scope Notice") specifying in reasonable detail the works and services contemplated thereunder.
- (b) Upon receipt of such Change of Scope Notice, the Concessionaire shall provide to MMRDA and the Independent Engineer such information as is necessary and reasonable together with preliminary documentation in support of the following:
 - (i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before COD, and
 - (ii) the cost to the Concessionaire of complying with such Change of Scope Notice
 - (iii) the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications. Provided, however, that the costs of providing such information shall be reimbursed to the Concessionaire by MMRDA to the extent such costs are certified to be reasonable by the Independent Engineer.
- (c) If MMRDA desires, after receipt of information set forth in Article 16.2. to proceed with the Change of Scope, it shall convey the desired option to the Concessionaire by issuing a Change of Scope Order and thereupon the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, MMRDA shall issue a written confirmation of the Change of Scope Order and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, MMRDA may, by issuing a confirmation in writing of such



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Change of Scope Order, require the Concessionaire to proceed with the performance of the change in Scope Order pending resolution of such dispute

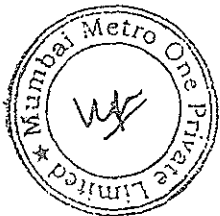
16.3 OMITTED

16.4 Payment for Change of Scope

The Concessionaire shall after commencement of work, present to MMRDA bills for payment in respect of the works in progress or completed works, as the case may be, supported by such documentation as is reasonably sufficient for MMRDA to determine the accuracy thereof, including invoices from Contractors and subcontractors and certification of such claims by the Statutory Auditors. Within 30 (thirty) Days of receipt of such bills, MMRDA shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer as reasonable, and in the event of any Dispute, the same shall be settled in accordance with the Dispute Resolution Procedure. For the removal of doubt, it is hereby clarified that any undisputed amount shall be payable without resorting to Dispute Resolution Procedure.

16.5 Restriction on Change of Scope

Notwithstanding anything to the contrary contained in this Article 16; the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost; provided however that the provisions of this Article 16.5 shall not be applicable in case inclusion of the Airport Link is provided as a part of the MRTS project resulting in a Change of Scope Order.



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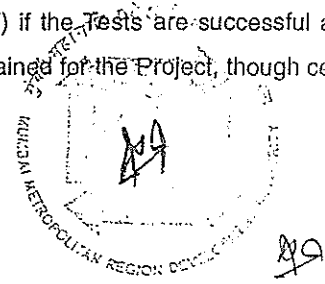


ARTICLE 17
COMMISSIONING AND TESTING

- 17.1 At least 90 (ninety) Days prior to the completion of the MRTS Project, the Concessionaire shall notify the Independent Engineer and MMRDA of its intent to subject the MRTS to Tests. The date and time of each of the tests shall be established by the Concessionaire who shall notify the same to MMRDA and the Independent Engineer not less than 10 (ten) Days in advance of such Tests.
- 17.2 All tests as envisaged in Schedule H and Performance Specification and Standards shall be conducted by Concessionaire.
- 17.3 If the Independent Engineer certifies to MMRDA and the Concessionaire that it is unable to issue the Completion Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- 17.4 If Independent Engineer is not satisfied with the results of any Tests, it shall within 7 (seven) Days thereof notify the Concessionaire of its reasons to conclude that the Completion Certificate should not be issued, in which case the Concessionaire shall promptly take such action as will achieve such satisfaction. Such procedure shall be repeated as necessary after rectification and remedy of reasons/causes by the Concessionaire on account of which the Tests were unsuccessful, until the Completion Certificate has been issued in accordance with this Agreement by the Independent Engineer.
- 17.5 The Concessionaire shall bear all the expenses relating to Tests under this Agreement
- 17.6 Completion Certificate/Provisional Completion Certificate
- 17.6.1 Upon successful completion of the Tests as confirmed by the Independent Engineer and obtaining safety clearance from the Safety Commissioner, the Independent Engineer shall issue a certificate substantially in the form set forth in Schedule I (the "Completion Certificate") for commissioning the MRTS.
- 17.6.2 The Independent Engineer may at the request of the Concessionaire, issue a provisional certificate of completion (the "Provisional Completion Certificate") if the Tests are successful and the safety clearance from the Safety Commissioner has been obtained for the Project, though certain works or things forming part thereof are not yet complete.



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17.6.3 The Independent Engineer shall issue the Completion Certificate or the Provisional Completion Certificate, as the case may be, within 24 hours of obtaining safety clearance from the Safety Commissioner.



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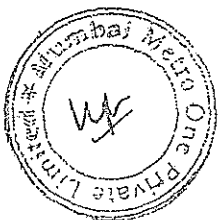
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ARTICLE 18
OPERATION AND MAINTENANCE

18.1 O&M obligations of the Concessionaire

The Concessionaire shall operate and maintain the MRTS Project by itself, or through O&M Contractors and if required, modify, repair or otherwise make improvements to the MRTS Project to comply with Performance Specifications and Standards, and other requirements set forth in this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits and manufacturer's guidelines and instructions and more specifically:

- (i) ensuring safe, smooth and uninterrupted flow of traffic during normal operating conditions;
- (ii) charging, collecting and retaining the Fares in accordance with this Agreement;
- (iii) minimizing disruption to commuters in the event of accidents or other incidents affecting the safety and use of the MRTS by providing a rapid and effective response and maintaining liaison procedures with emergency services;
- (iv) undertaking routine maintenance including prompt repairs of tracks, stations, rolling stock, signaling and communication network;
- (v) undertaking Major maintenance such as replacement of tracks/rail, repairs to buildings/structures, repairs and refurbishment of rolling stock/signaling/ traction/fare collection/ and communication network;
- (vi) carrying out periodic preventive maintenance of MRTS as per maintenance manuals;
- (vii) preventing with the assistance of concerned law enforcement agency, if required, unauthorized entry to and exit from the MRTS Project;
- (viii) preventing with the assistance of the concerned law enforcement agencies encroachments on the MRTS Project including Site and preserve the right of way of the MRTS Project;
- (ix) maintaining a public relations unit to interface with and attend to suggestions from users of the MRTS Project, the media, Government Agencies, and other external agencies; and
- (x) adherence to the safety standards set out in Schedule J as well as those which would be laid down in Maintenance Manuals for all disciplines and Disaster Management Manual as approved by MMRDA.



18.2 Maintenance Manual

The Concessionaire shall prepare not later than 180 (One hundred eighty) Days before the Scheduled Project Completion Date, the repair and maintenance manuals (the "Maintenance Manuals for all disciplines") and submit to the Independent Engineer for approval. The Concessionaire shall perform the regular and periodic maintenance of the MRTS, and shall ensure that at all times during the Operations Period, the MRTS Project is maintained in a manner that it complies with the Performance Specifications and Standards set forth in Schedule D and the minimum Operation & Maintenance requirements set forth in Schedule J. The Concessionaire shall supply, at least three months before the COD, 10 (ten) copies of each discipline of the Maintenance Manual to MMRDA and 3 (three) copies to the Independent Engineer. The Maintenance Manual shall be revised and updated once every 5 (five) years and the provisions of this Article 18.2 shall apply, mutatis mutandis, to such revision; provided that the first such revision shall be undertaken within 3 (three) years of COD.

18.3 Maintenance Programme

Within forty five (45) Days of the beginning of each Accounting Year, the Concessionaire, in consultation with the Independent Engineer shall prepare a proposed programme of preventive and other scheduled maintenance of the MRTS (including minimum maintenance requirements set forth in Maintenance Manual necessary to maintain the MRTS at all times in conformity with the Specifications and Standards (the "Maintenance Programme") and provide a copy of the same to MMRDA. Such Maintenance Programme shall include but not be limited to the following:

- (i) As per Maintenance Manuals;
- (ii) As per periodic maintenance requirements;
- (iii) Proposal for special maintenance requirements out of periodic maintenance;
- (iv) As per proposals of MMRDA if any.

18.4 Cleanliness

The Concessionaire shall keep the Project Facilities and stations in a clean, tidy and orderly condition free of litter and debris.



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18.5 Modifications during Operations Period

During the Operations Period, the Concessionaire shall not carry out any modifications to the MRTS Project save and except where such (i) modification is required by Good Industry Practice; or (ii) modification is necessary for the MRTS Project to operate in conformity with the Specifications and Standards prescribed under this Agreement or (iii) mutually agreed improvements. Provided that the Concessionaire shall advise the Safety Commissioner appointed by GOM of the proposed modifications along with details thereof and obtain his approval at least fifteen (15) Days before commencing work on such modifications.

18.6 Safety, Train Breakdown and Accident

18.6.1 In the case of unsafe conditions, train breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the removal of obstruction and disabled trains, organizing alternate arrangement for stranded passengers. Such procedures shall be in accordance with the provisions contained in Maintenance Manuals and Disaster Management Manuals as approved by MMRDA and shall conform to the provisions of the Applicable Laws, Applicable Permits and Good Industry Practice. Information of all such incidents shall be immediately furnished to Safety Commissioner.

18.6.2 The Concessionaire shall ensure that any interruption of traffic is remedied without delay. The Concessionaire's responsibility as regards rescue, relief and restore the traffic is detailed out in the Disaster Management Manual.

18.7 Failure to perform to Performance Specifications and Remedy Default

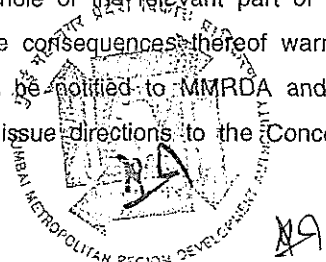
If the Concessionaire, on his default fails to operate and improve progressively latest by

-1st year of operation: 97% of the Scheduled Services

-2nd year of operation: 99% of the Scheduled Services on any three Days in a week, it shall constitute a Penalty Point. Every Penalty Point would lead to reduction of Concession Period by one Day.

18.8 Emergency De-commissioning

18.8.1 If, in the reasonable opinion of the Concessionaire, there exists an emergency which warrants decommissioning and closure to commuters of whole or any part of the MRTS, the Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the MRTS to commuters for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to MMRDA and Independent Engineer promptly. The Independent Engineer may issue directions to the Concessionaire for



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dealing with such situations and the Concessionaire shall abide by such directions.

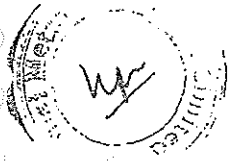
18.8.2 The Concessionaire shall re-commission the MRTS or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.

18.9 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the MRTS is not available to traffic after the COD on account of any of the following for the duration thereof. (i) an event of Force Majeure; (ii) measures taken to ensure the safe use of the MRTS Project except when unsafe conditions on the track occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or compliance with a request from MMRDA or the directions of any Governmental Agency for the reasons of safety and security of the commuters and system, the effect of which is to close all or any part of the MRTS Project. If the MRTS project or parts of it are shut down as a result of a request or direction from MMRDA or a Governmental Agency and such request or direction is not on account of any default or breach of obligation of the Concessionaire then, if the MRTS or part thereof is shut down for a continuous period of more than 12 hours, then MMRDA shall proportionately extend the Concession Period as recommended by the Independent Engineer. On the occurrence of those events specified in Article 27 save that in such instances the periods referred to in 27.2(ii) and 27.3 shall not be taken into account. Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the MRTS Project open to Commuters and use provided they can be safely operated and kept open to Commuters.

18.10 Integration with other Mumbai Metro Rail Master plan Corridors

GOM / MMRDA has planned for phased implementation of an estimated eight more corridors of MRTS Corridors as per the Mumbai Metro Rail Master Plan. As and when these planned Corridors become operational –through SPVS/ Operators as the case may be it would be essential to have fare integration/common ticketing and operational integration for the effective functioning of the system as a whole. Hence, suitable facilities at the interchange points will call for cooperation and coordination amongst the various SPVS/ Operators



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It may also be necessary to share certain maintenance facilities especially car-depot facilities for mutual benefit. The Concessionaire must take note of the said requirements; MMRDA will act as the facilitator, if required with no financial involvement whatsoever.



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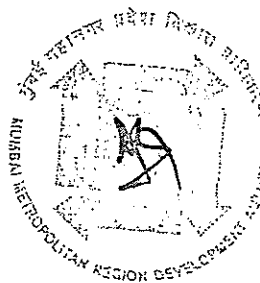
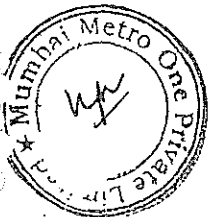
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ARTICLE 19

MONITORING AND SUPERVISION DURING OPERATION

- 19.1 The Concessionaire shall undertake periodic inspection of the MRTS as per the Maintenance Programme, Performance Specifications and Standards and this Agreement and shall submit reports including compliance or otherwise with maintenance manual of such inspection ("Maintenance Reports") to MMRDA and the Independent Engineer as required.
- 19.2 The Independent Engineer shall review the Maintenance Reports and inspect the MRTS Project jointly with Concessionaire once a month during the Operations Period and make out an Inspection Report of such inspection (the "O&M Inspection Report"). The Independent Engineer shall send a copy of its O&M Inspection Report to MMRDA and the Concessionaire within 7 Days. The Concessionaire shall within 30 (thirty) Days of the receipt of the O&M Inspection Report remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to the Independent Engineer and MMRDA within the said 30 (thirty) Days period. Where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) Days in accordance with Good Industry Practice, the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection Report may also require the Concessionaire to undertake such tests as may be specified by the Independent Engineer for the purpose of determining that the MRTS Project is at all times in conformity with the Specifications and Standards. The Concessionaire shall undertake such Tests without any delay and furnish a copy of the results thereof to the Independent Engineer and MMRDA along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by the Independent Engineer or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 19.3 MMRDA and the Independent Engineer may inspect the MRTS Project at any time, if required for a review of the compliance by the Concessionaire with its maintenance obligations under this Agreement.
- 19.4 **Annual Revenue Statement**

The Concessionaire shall furnish to MMRDA within 7 (seven) Days of completion of each calendar year during the Operations Period, a statement of Revenues in the form set forth in Schedule K₂ (the "Annual Revenue Statement").



ARTICLE 20
INDEPENDENT ENGINEER

20.1 Appointment of Independent Engineer

MMRDA shall appoint a firm to act as Independent Engineer. The procedure for such appointment shall be as detailed in Schedule S1 annexed to this Agreement.

20.2 Duties and functions

20.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule S2.

20.2.2 The Independent Engineer shall submit regular periodic reports (at least once every month) as the situation may warrant to MMRDA and the Concessionaire in respect of its duties and functions set forth in Schedule S2.

20.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by MMRDA. One half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to MMRDA within 15 (fifteen) Days of receiving a statement of expenditure from MMRDA.

20.4 Termination of Appointment

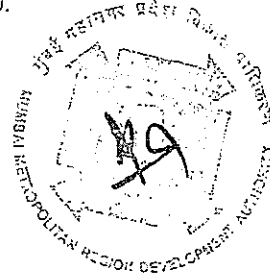
20.4.1 MMRDA, may in consultation with the Concessionaire terminate the appointment of Independent Engineer at any time subject to after appointment of another Independent Engineer in accordance with this Article 20.

20.4.2 If the Concessionaire has reason to believe that the Independent Engineer is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to MMRDA and seek termination of the appointment of the Independent Engineer. Upon receipt of such representation, MMRDA shall hold a tripartite meeting with the Concessionaire and Independent Engineer for amicable resolution of the dispute. If the dispute remains unresolved, it shall be resolved in accordance with the Dispute Resolution Procedure. In case the appointment of Independent Engineer is terminated hereunder, MMRDA shall appoint forthwith another Independent Engineer in accordance with this Article 20.



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ARTICLE 21
RIDERSHIP ESTIMATION

21.1 Ridership Estimation

For the purpose of determination and/or verification of the actual rider ship on the MRTS Project, MMRDA shall, in addition to inspection of Concessionaire's records, be entitled to undertake rider ship estimation at such frequency and in such manner as MMRDA may deem appropriate, at the cost of MMRDA. The Concessionaire shall provide all facilities and assistance as MMRDA may reasonably require for undertaking such rider ship estimation.



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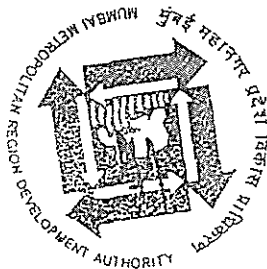
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ARTICLE 22
FINANCIAL CLOSE

- 22.1 The Concessionaire shall provide to MMRDA, a copy of the Financing Package furnished by it to the prospective Senior Lenders. As and when such Financing Package is approved by the Senior Lenders, with or without modifications, a copy of the same shall be furnished by the Concessionaire to MMRDA forthwith.
- 22.2 The Concessionaire covenants with MMRDA that it shall achieve Financial Close within 180 (one hundred eighty) Days from the date of this Agreement.
- 22.3 In the event Concessionaire fails to achieve Financial Close within 180 Days from the Appointed Date, MMRDA may extend the period for achieving Financial Close for a further period up to 180 (one hundred eighty) Days.
- 22.4 If the Financial Close does not occur, for any reason, within the period set forth in Article 22.2 or the period set forth in Article 22.3 if MMRDA so extends, then MMRDA shall be entitled to and may terminate this Agreement and all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire.
- 22.5 Upon Termination of this Agreement under Article 22.4, MMRDA shall be entitled to encash the Performance Security, and appropriate the proceeds towards Damages; provided however if Financial Close has not occurred solely as a result of MMRDA being in default of any of its obligations under this Agreement, it shall upon Termination, (i) refund in full the Performance Security and (ii) reimburse costs incurred by the Concessionaire and as certified by the Statutory Auditor and recommended by the Independent Engineer.



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ARTICLE 23
CAPITAL CONTRIBUTION AND MMRDA EQUITY

23.1 MMRDA agrees to provide to the Concessionaire cash support by way of Capital Contribution equal to the sum, namely, Rs. 6500 million (Rupees Six Thousand Five hundred million only) in accordance with the provisions of this Article 23.

In the event that GOI, GOM or any other Governmental Agency grants any exemption in Taxes for the MRTS Project subsequent to the last date for financial bid submission (10th January 2006), the Capital Contribution by MMRDA shall be reduced by the amount of such exemption in Taxes.

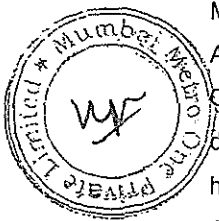
The Parties agree that the Concessionaire is not required to repay any portion of the Capital Contribution disbursed to it by MMRDA and utilized by the Concessionaire for the Project and that MMRDA shall not be entitled to any interest (whether by way of equity or otherwise) of the Concessionaire or the Project solely by reason of the Capital Contribution.

23.2 The Capital Contribution shall be applied by the Concessionaire for meeting the capital cost of the Project and shall be disbursed by MMRDA in the manner prescribed in Article 23.3.

23.3 The whole or any part of the Capital Contribution shall be disbursed by MMRDA to the Concessionaire if and only if the Concessionaire is not in Material Breach of this Agreement at the time of such disbursement.

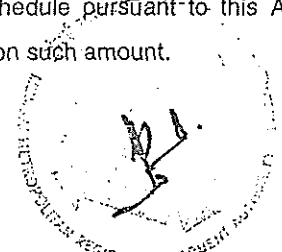
Only 85% of the Capital Contribution shall be released during Construction Period. The expenditure will be proportionately made from (a) equity share capital to be invested in the company by the Shareholders; (b) loan funds to be disbursed by the Senior Lenders under the Financing Documents for meeting the Total project Cost and (c) the Capital Contribution (VGF) to be released by MMRDA as per the Financing Package.

MMRDA shall disburse each tranche of the Capital contribution as aforesaid by credit to the Escrow Account within 30 Days of the release of each loan installment by the Senior Lenders to the Concessionaire provided the Concessionaire has submitted to MMRDA along with each disbursement request a certificate from its Statutory Auditors certifying the above particulars and has given at least 7 (seven) Days to MMRDA for processing such request. The balance 15% of the Capital Contribution will be disbursed within 15 (fifteen) Days after completion of 6 (six) months of operations after the Commercial Operation Date (COD). If any part of the Capital Contribution is not released by MMRDA in accordance with the time schedule pursuant to this Article 23.3, then MMRDA shall pay interest at the rate SBI PLR plus 2% on such amount.



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23.4 MMRDA Equity

MMRDA shall have a 26% equity interest in the SPV payable in cash. The equity infusion by MMRDA shall be proportionately along with the equity infusion to be made by the shareholders of the SPV other than MMRDA. MMRDA (along with its nominees) shall subscribe to such Equity in the Company in proportionate to its shareholding in the Company to maintain its equity stake at 26%.



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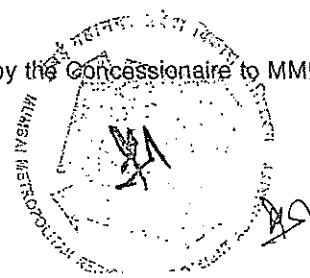
ARTICLE 24
ESCROW ACCOUNTS

24.1 The Concessionaire shall within 30 Days from the date of signing the Escrow Agreement open and establish the Escrow Account with a Bank (the "Escrow Bank") and all funds constituting the Financing Package shall be credited to such Escrow Account. During Operations Period all Fares collected by the Concessionaire from the Commuters and any other revenues from the MRTS project including the revenues from Additional Concessions granted by MMRDA shall be exclusively deposited therein. Further any payments made by MMRDA, shall be exclusively deposited into the Escrow Account. It is further clarified that in the event that MMRDA operates the MRTS system, instead of the Concessionaire then all revenue accruing from such operation shall also be credited to the Escrow Account

24.2 Disbursements from Escrow Account

24.2.1 The Concessionaire shall give, at the time of the opening of the Escrow Account, irrevocable instructions by way of an Escrow Agreement substantially in form set forth in Schedule M (the "Escrow Agreement") to the Escrow Bank instructing, inter alia, that the deposits into the Escrow Account shall be appropriated in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter:

- (a) all taxes, duties and statutory payments as payable by the Concessionaire;
- (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 Concessionaire 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) debt service in respect of Subordinated Debt;
- (g) Any payments and Damages due and payable by the Concessionaire to MMRDA pursuant to this Agreement;



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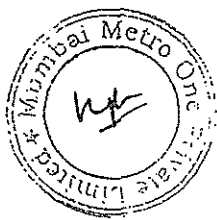
- (h) any reserve requirements set forth in the Financing Agreement and
- (i) balance, if any, in accordance with the instructions of the Concessionaire.

24.2.2 The Concessionaire shall not in any manner modify the order of payment specified in this Article 24.2 except with the prior written approval of MMRDA.

24.3 Notwithstanding anything to the contrary contained in the Escrow Agreement and Article 30, upon Termination or Expiry of this Agreement as the case maybe, 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 Concessionaire;
- (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 Concessionaire 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 Concessionaire.

24.4 The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 24.3 have been discharged.



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ARTICLE 25
INSURANCE

25.1 Insurance during Construction Period

The Concessionaire shall obtain and maintain at no cost to MMRDA during the Construction Period in respect of the MRTS Project such insurances as may be required under any of the Financing Documents, Applicable Laws and such insurance as is necessary or desirable in accordance with Good Industry Practice and which is available in the market.

For the sake of brevity, the overall insurance taken out by the Concessionaire pursuant to this Article 25 are herein referred to as the "Insurance Cover".

25.2 Insurance during the Operations Period

Not later than 60 (sixty) Days prior to anticipated COD, the Concessionaire shall, at its cost and expense, purchase and maintain during the Operations Period insurance as may be required under any of the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable in accordance with Good Industry Practice and which are available in the market.: Provided, however, the level of insurance to be maintained after satisfaction of Senior Lenders' dues in full, shall be determined on the same principles as applicable for determining the level of Insurance prior to such date. The sum insured shall be determined by the Concessionaire and MMRDA jointly. The insurances that the Concessionaire shall obtain and maintain during the Operation Period shall include but not be limited to the following:

- (a) Insurances in respect of "all risks" as customarily covered by insurance policies for physical loss or damage or destruction to the MRTS Project Facilities at replacement value;
- (b) Insurance cover in respect of liability to, contractors, employees, Commuters and third parties in respect of loss or damage arising out of design, construction, operation and maintenance of the MRTS Project, including those on account of accident, for Treatment or hospitalisation (contingent liability) or in case of death or any other insurance that may be necessary.
- (c) advance loss of profit insurance cover to indemnify the Concessionaire in respect of loss of profit for a period of not less than 6 (six) months if there is a loss of profit on account of any of the insurance covers mentioned in Article 25.
- (d) any other insurance that may be necessary to protect the Concessionaire and its employees including all Force Majeure Events that are insurable and not otherwise covered in items (a) to (c).



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25.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 25 shall be maintained with insurer or reinsures and on terms consistent with Good Industry Practice. Within thirty Days of obtaining any insurance cover, the Concessionaire shall furnish to MMRDA, copies of certificates of insurance, copies of the insurance policies signed by an authorized representative of the insurer and copies of all premia 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 proposed cancellation or change or non-refurbishment has been delivered to MMRDA.

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25.5 Validity of the Insurance Cover

The Concessionaire shall pay the premium payable on such insurance policy (ies) so as to keep the policy(ies) in force and valid throughout the Concession Period and furnish copies of the same to MMRDA. Each insurance policy shall provide that the same shall not be cancelled or terminated unless 10 (ten) Days' clear notice of cancellation is provided to MMRDA in writing. If at any time the Concessionaire fails to purchase and maintain in full force and effect any and all of the insurances requested under this Agreement, MMRDA may at its option purchase and maintain such insurance and all sums incurred by MMRDA there for shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the MMRDA by exercising right of set off or otherwise.

25.6 Waiver of Subrogation

All insurance policies taken by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, MMRDA, and its assigns, subsidiaries, affiliates, employees, insurers 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.

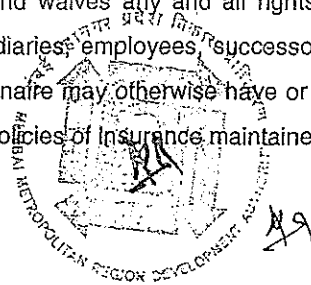


25.7 Concessionaire Waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the MMRDA, and its affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss covered by policies of insurance maintained or required

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to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible Articles.

25.8 Application of Insurance Proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account (unless otherwise required by the Financing Documents) who shall, subject to its obligations under the Financing Documents, and notwithstanding anything to the contrary contained in Article 24, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, delivery or installation of the MRTS Project.



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ARTICLE 26
ACCOUNTS AND AUDIT

26.1 Audited accounts

The Concessionaire shall maintain books of accounts recording all its receipts (including Fares and other revenues derived/collected by it from and on account of the MRTS Project and/or its use), income expenditure; and payments (including payments from the Escrow Account); and assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet and Profit and Loss Account along with a report thereon by its Statutory Auditors, within 30 Days of its finalisation, as per Applicable Law of the close of each Accounting Year to which they pertain and such audited accounts shall form the basis of various payments by either Party under this Agreement.

26.2 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from a list of independent and reputable firms of Chartered Accountants (the "List of Chartered Accountants"), such list to be prepared in accordance with the criteria set forth in Schedule O. The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 30 (thirty) Days to MMRDA subject to the replacement Statutory Auditors being appointed from the List of Chartered Accountants. All fees and expenses of Statutory Auditors shall be borne by the Concessionaire.

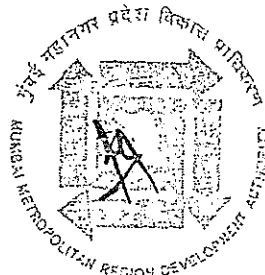
26.3 Notwithstanding anything to the contrary contained in this Agreement, MMRDA shall have the right but not the obligation to appoint at its cost another firm of chartered accountants from the List of Chartered Accountants (the "Additional Auditor") to audit and verify all those matters, expense, costs, realisations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.

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



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ARTICLE 27
FORCE MAJEURE AND TERMINATION

27.1 Force Majeure as used in this Agreement, the expression "Force Majeure" or "Force Majeure Event" shall mean occurrence in India of any or all of Non Political Event, Indirect Political Event and/or Political Event as defined in Articles 27.2, 27.3 and 27.4 and which prevents the Party claiming Force Majeure (the "Affected Party") from performing its obligations under this Agreement and which act or event is (i) beyond the reasonable control and not arising out of the fault of the Affected Party; and, (ii) the Affected Party has been unable to overcome such act or event by the exercise of due diligence and reasonable efforts, skill and care and (iii) has a Material Adverse Effect on the Project. For the purpose of this Article the Affected Party shall include Contractors of the concessionaire but not any sub-contractors.

27.2 Non Political Event

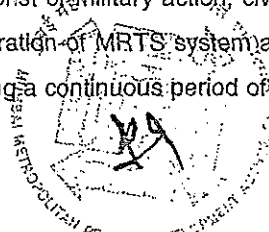
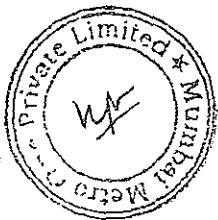
For purposes of Article 27.1, Non-Political Event shall mean one or more of the following acts or events:

- (i) acts of God or events beyond the reasonable control of the Affected Party and against which an experienced party could not be reasonably expected to take precautions, exceptionally adverse weather conditions, lightning, earthquake, cyclone, flood, volcanic eruption or fire to the extent originating from a source external to the Site or beyond design specification for the construction works;
- (ii) radioactive contamination or ionising radiation;
- (iii) strikes or boycotts other than those involving the Concessionaire, Contractors or their respective employees/ representatives or attributable to any act or omission of any of them) interrupting supplies and services to the MRTS Project for a period exceeding a continuous period of 7 (seven) Days in an Accounting Year, and not being an Indirect Political Event set forth in Article 27.3 hereof;
- (iv) Any archaeological finding that prevents a Party from discharging its obligations

27.3 Indirect Political Event

For purposes of Article 27.1, Indirect Political Event shall mean one or more of the following acts or events:

- (i) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage which prevents operation of MRTS system and collection of Fares by the Concessionaire for a period exceeding a continuous period of 7 (seven) Days



in an Accounting Year;

- (ii) industry wide, city wide or state wide or India wide strikes or industrial action which prevent operation of MRTS system and collection of Fares by the Concessionaire for a period exceeding a continuous period of 7 (seven) Days in an Accounting Year;
- (iii) any public agitation which prevents the operation on MRTS system and collection of Fares by the Concessionaire for a period exceeding a continuous period of 7 (seven) Days in an Accounting Year;

If there is partial disruption of the MRTS system due to the occurrence of an Indirect Political Event or Non Political Event as the result of which the Concessionaire is unable to operate the MRTS system and collect the Fares at any station then the Concession Period shall be extended in accordance with the formula set out in Schedule Z.

27.4 Political Force Majeure Event

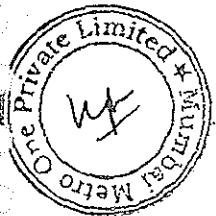
For purposes of Article 27.1, Political Event shall mean one or more of the following acts or events by or on account of GOI, GOM or any other Governmental Agency:

- (i) Expropriation or compulsory acquisition by any Governmental Agency of any Project Assets or rights of the Concessionaire or of the Contractors.
- (ii) Change in law only where conditions of Article 34 cannot be applied.

27.5 Effect of Force Majeure Event before Financial Close

Upon the occurrence of any Force Majeure Event prior to Financial Close as set forth in Article 22, the following shall apply:

- (a) there shall be no Termination except as provided in Article 27.8.
- (b) the date for achieving Financial Close, the date set forth in the Project Completion Schedule and the Concession Period shall be extended by a period equal in length to the duration of the Force Majeure Event; and any further reasonable period of time as determined by the Independent Engineer.
- (c) the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs arising out of such Force Majeure Event.



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27.6 Effect of Force Majeure Event after Financial Close:

Upon occurrence of any Force Majeure Event after Financial Close, the following shall apply:

- (a) there shall be no Termination of this Agreement except as provided in Article 27.8;
- (b) where a Force Majeure Event occurs before COD, the dates set forth in the Project Completion Schedule, and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist and any further reasonable period of time as determined by the Independent Engineer.;
- (c) where a Force Majeure Event occurs after COD, the Concessionaire shall continue to make all reasonable efforts to operate the System and collect Fares, but if he is unable to collect Fares during the subsistence of such Force Majeure Event, the Concession Period shall be extended by the period for which the collection of Fares remains suspended on account thereof and any further reasonable period of time as determined by the Independent Engineer.; However in case of Indirect Political Events and Non Political Events under Article 27.2 (iii) such extension shall be determined as per Schedule Z: and
- (d) costs arising out of or concerning such Force Majeure Event shall be borne in accordance with the provisions of Article 27.7.

27.7 Allocation of costs arising out of Force Majeure

Subject to the provisions of Article 27.6 upon occurrence of a Force Majeure Event after Financial Close, the costs incurred and attributable to such event and relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

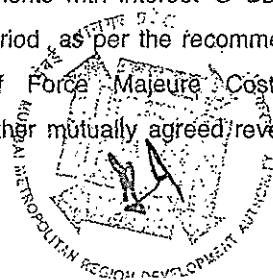
- (a) Where the Force Majeure Event is a Non Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event;
- (b) Where the Force Majeure Event is an Indirect Political Event, the Parties shall bear their respective costs and neither Party shall be required to pay to the other Party any costs arising out of any such Force Majeure Event
- (c) Where the Force Majeure Event is a Political Event, the Force Majeure Costs to the extent actually incurred and resulting from and certified by the Statutory Auditors of Concessionaire shall be reimbursed by MMRDA to the Concessionaire either (i) in one lump sum or paid in three equal annual installments with interest @ SBI PLR plus two percent or (ii) An increase in the Concession Period, as per the recommendations of the Independent Engineer for reimbursement of Force Majeure Costs or (iii) the Concessionaire is permitted to undertake any other mutually agreed revenue generating



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For avoidance of doubt, Force Majeure Costs shall not include loss of Fare revenues and /or any debt repayment obligations but shall include interest payments on such debt, any increase in cost of construction on account of inflation, O&M Expenses and all other costs directly attributable to the Force Majeure Event.

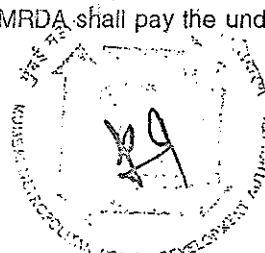
27.8 Termination Notice

If any Force Majeure Event subsists for a period of 180 (one hundred eighty) Days or more within a continuous period of 365 (three hundred sixty five) Days, Concessionaire may terminate this Agreement by giving 30 (thirty) Days Termination Notice in writing to the other Party.

27.9 Termination Payment for Force Majeure Events

Upon Termination of this Agreement pursuant to Article 27.8, Termination Payment to the Concessionaire shall be made in accordance with the following:

- (a) If the Termination is on account of a Non Political Event, MMRDA shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety percent) of the Debt Due less insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 90% (ninety percent) of such claims shall qualify for being included in the computation of Debt Due.
- (b) If the Termination is on account of an Indirect Political Event, MMRDA shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (i) 100% (one hundred percent) of Debt Due less insurance claims, if any. provided that in the event some insurance claims are not admitted, then 80% (eighty percent) of such claims shall qualify for being included in the computation of Debt Due; and
 - (ii) 110% (one hundred and ten percent) of the Adjusted Equity.
- (c) If the Termination is on account of a Political Event, MMRDA shall make a Termination Payment to the Concessionaire in an amount equal to:
 - (i) 100% (one hundred percent) of Debt Due; and
 - (ii) 110% (one hundred and ten percent) of the Adjusted Equity.
- (d) In case of any disputes relating to the quantum of Termination Payments, the matter shall be finally settled in accordance with the Dispute Resolution Procedure as per Article 37. For the sake of clarity, the Parties agree that MMRDA shall pay the undisputed portion of the Termination Payment.



27.10 Dispute Resolution

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

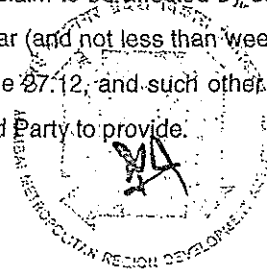
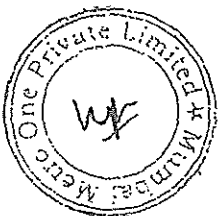
27.11 Liability for other losses, damages etc

Save and except as expressly provided in this Article 27, neither Party hereto shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant to this Article 27.

27.12 Duty to Report

The Affected Party shall discharge the following obligations in relation to reporting the occurrence of a Force Majeure Event to the other Party:

- (a) The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party in writing of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event within 7 (seven) Days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- (b) Any notice pursuant to this Article 27.12 shall include full particulars of:
 - (i) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 27 with evidence in support thereof;
 - (ii) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
 - (iii) the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such Force Majeure Event; and
 - (iv) any other information relevant to the Affected Party's claim.
- (c) For so long as the Affected Party continues to claim to be affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) written reports containing information as required by this Article 27.12, and such other information as the other Party may reasonably request the Affected Party to provide.



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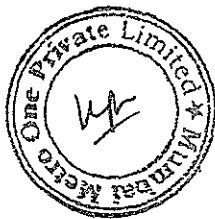
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27.13 Excuse from performance of obligations

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

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



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ARTICLE 28
MATERIAL BREACH AND SUSPENSION

28.1 Suspension for Material Breach by the Concessionaire

If the Concessionaire shall be in Material Breach of this Agreement, MMRDA shall be entitled in its sole discretion and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (i) suspend all or any of the rights (and the corresponding obligations) of the Concessionaire under this Agreement including the Concessionaire's right to collect and appropriate all Fares and other revenues from the MRTS Project, and (ii) exercise the rights of the Concessionaire under this Agreement itself or authorise any other person to exercise the same during such suspension. Such suspension by MMRDA shall be by a communication in writing to the Concessionaire and shall be effective forthwith upon the issue thereof to the Concessionaire. Any Fares or revenues collected by or on behalf of MMRDA during such suspension shall be deposited in the Escrow Account. Provided, however, that the period of such suspension under this Article 28 shall not exceed 120 (one hundred twenty) Days.

For the sake of clarity, the Parties agree that only the obligation of Debt Service Payment to Lenders shall continue to be performed by the Concessionaire during the period of suspension.

28.2 Subject to Article 28.1, MMRDA shall have the right to utilise the proceeds of Fares and other revenues for meeting the costs incurred by MMRDA to remedy and cure the cause of such suspension and for defraying the O&M Expenses during such suspension period. Provided, however, that if the Concessionaire is making diligent efforts to remedy and cure such cause, then MMRDA shall allow the Concessionaire reasonable time and opportunity for such remedy or rectification

28.3 Revocation of Suspension

The suspension of the rights of the Concessionaire by MMRDA pursuant to Article 28.1 above shall be revoked by MMRDA forthwith upon the Concessionaire having remedied the Material Breach during such suspension period to the satisfaction of MMRDA unless in the meantime this Agreement has been terminated by MMRDA in accordance with Article 30.



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28.4 Termination

At any time during the period of suspension under this Article 28, the Concessionaire may in writing notify to MMRDA that it does not intend to cure the breach or default that had caused such Suspension. Within 7 (seven) Days of receipt of such notice, MMRDA shall terminate this Agreement as if a Material Breach of this Agreement had occurred on account of a Concessionaire Event of Default.



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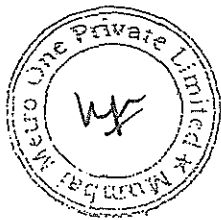
ARTICLE 29
COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

In the event of Concessionaire being in material default of this Agreement and such default is cured before Termination, the Concessionaire shall pay to MMRDA as compensation, all direct additional costs suffered or incurred by MMRDA arising out of such material default by the Concessionaire, in one lump sum within 30 (thirty) Days of receiving the demand.

29.2 Compensation for default by MMRDA

In the event of MMRDA being in material default of this Agreement and such default is cured before Termination, MMRDA shall pay to the Concessionaire as compensation, all direct additional costs suffered or incurred by the Concessionaire arising out of such material default by MMRDA, either (a) in one lump sum within 30 (thirty) Days of receiving the demand or (b) An increase in the Concession Period as per the recommendations of the Independent Engineer for reimbursement of Force Majeure Costs or (c) by permitting the Concessionaire to undertake any other mutually agreed revenue generating activity.



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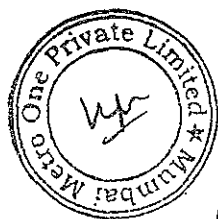
ARTICLE 30
TERMINATION AND EXPIRY

30.1 Termination for the Concessionaire Event of Default

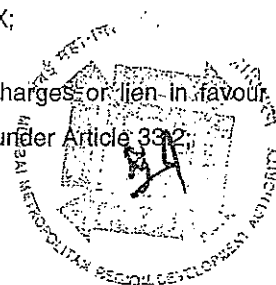
30.1.1 Concessionaire Event of Default

The following events shall constitute an event of default by the Concessionaire (a "Concessionaire Event of Default") unless such Concessionaire Event of Default has occurred as a result of MMRDA Event of Default or a Force Majeure Event;

- (1) the Concessionaire fails to achieve Financial Close in accordance with the provisions of Article 22;
- (2) the Concessionaire fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth in Schedule F and fails to cure such default within a period of 180 (one hundred and eighty) Days from the date of its occurrence.
- (3) **Intentionally left blank**
- (4) the Concessionaire commits default in complying with any of its material obligations, terms or conditions of this Agreement, save and except those defaults in respect of which a Cure Period has been expressly provided in this Agreement and it has failed to remedy or cure the same within the period provided in a notice in this behalf from MMRDA which shall:
 - (i) require the Concessionaire to remedy the breach or breaches referred to in such notice within a Cure Period of 1 (one) month (or such longer period as may be agreed by the MMRDA at its absolute discretion); or
 - (ii) permit the Concessionaire to put forward within 15 Days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- (5) if the COD does not occur within a period of 180 (one hundred and eighty) Days from the Scheduled Project Completion Date;
- (6) in case of O & M failure, as described in Schedule X;
- (7) the Concessionaire creates, any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Article 33.2;



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- (8) the shareholding of the Consortium Members falls below the minimum prescribed under Article 8.6 and the Concessionaire does not cure such default within 90 (ninety) Days of its occurrence;
- (9) a resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- (10) the Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- (11) any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:
 - (i) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreement;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Financial Close; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (12) an event of default of the Concessionaire under any of the Financing Documents has occurred and any of the Senior Lenders has recalled its loan under any of the Financing Documents;
- (13) the Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;



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- (14) the Concessionaire suffers an attachment order being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 90 (ninety) Days,
- (15) the Concessionaire has delayed any payment of more than 10 crores that has fallen due under this Agreement for more than 90 (ninety) Days;
- (16) the transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of MMRDA does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;
- (17) the Concessionaire abandons the operations of the MRTS Project for more than 30 (thirty) consecutive Days without the prior consent of MMRDA, provided that the Concessionaire shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing or is resulting from Force Majeure Event, or (ii) is on account of a breach of its obligations by MMRDA.

30.1.2

Without prejudice to any other right or remedy which MMRDA may have in respect thereof under this Agreement, upon the occurrence of any Concessionaire Event of Default, MMRDA shall be entitled to terminate this Agreement by a communication in writing (the "Termination Notice") to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, MMRDA shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice") and grant 15 (fifteen) Days time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) Day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.



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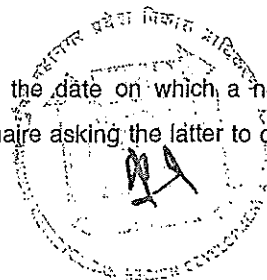
The following shall apply in respect of rectification of any of the defaults and/or breaches of this Agreement;

- (i) the Cure Period shall commence from the date on which a notice in writing is delivered by MMRDA to the Concessionaire asking the latter to cure the breach or

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default specified in such notice.

- (ii) the Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for Damages caused by its breach or default;
- (iii) the Cure Period shall not in any way be extended by any period of suspension under this Agreement but shall be extended for the period the Force Majeure Event subsists.
- (iv) if the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by MMRDA hereunder the applicable Cure Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by MMRDA to accord their required approval.

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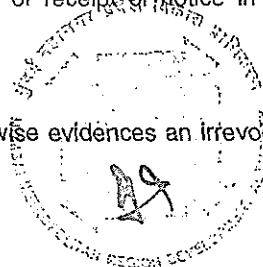
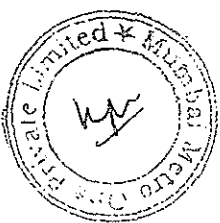
30.3 Subject to the other terms of this Agreement, upon Termination by MMRDA on account of occurrence of Concessionaire Event of Default during the Concession Period, MMRDA shall pay to the Concessionaire by way of Termination Payment an amount equal to 90% (ninety percent) of the Debt Due less insurance claims, if any. Provided that in the event some insurance claims are not admitted, then 80% (eighty percent) of such claims shall qualify for being included in the computation of Debt Due.

30.4 Notwithstanding anything to the contrary contained herein or in the Project Agreements, MMRDA may terminate this Agreement if the Shareholders Agreement stands terminated due to a Preferred Bidder Event of Default.

30.5 Termination for MMRDA Event of Default

30.5.1 The Concessionaire may after giving 90 (ninety) Days notice in writing to MMRDA terminate this Agreement upon the occurrence and continuation of any of the following events (each a "MMRDA Event of Default"), unless any such MMRDA Event of Default has occurred as a result of Concessionaire Event of Default;

- (1) MMRDA is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and MMRDA has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) Days of receipt of notice in this behalf from the Concessionaire;
- (2) MMRDA repudiates this Agreement or otherwise evidences an irrevocable intention not to



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be bound by this Agreement;

- (3) GOM is in breach of its obligations and such breach has a Material Adverse Effect on the performance of the Concessionaire's obligations and GOM has failed to cure the same within 90 (ninety) Days of receipt of notice in this behalf from the Concessionaire;
- (4) MMRDA has delayed any payment more than Rs.10 Crores that has fallen due under this Agreement if such delay exceeds 90 (ninety) Days.
- (5) MMRDA becomes or is declared bankrupt or an order of voluntary or compulsory liquidation is passed by a court of competent jurisdiction, except for the purpose of amalgamation or reconstruction;"
- (6) MMRDA suffers an attachment order being levied on any of its assets/equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 90 (ninety) Days.

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

30.5.3 Subject to the other terms of this Agreement, upon Termination by the Concessionaire on account of occurrence of MMRDA Event of Default during the Concession Period, MMRDA shall make a Termination Payment to the Concessionaire in an amount equal to:

- (i) 100% (one hundred percent) of Debt Due; and
- (ii) 110% (one hundred and ten percent) of the Adjusted Equity.



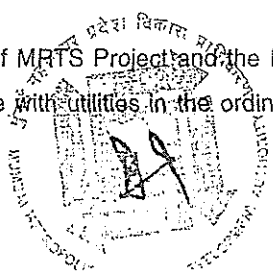
30.6 Other rights and obligations of MMRDA

Upon Termination of this Agreement for any reason whatsoever, MMRDA shall be entitled to:

- (i) take ownership, possession and control of MRTS Project and the Project Assets save for distributable dividends and deposits made with utilities in the ordinary course of business

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forthwith;

- (ii) take ownership, possession and control forthwith of any materials, plant, implements, stores, spares etc. on or about the Site belonging to the Concessionaire.
- (iii) restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the MRTS Project; and / or
- (iv) succeed upon election by MMRDA without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreement and shall upon such election be required to compensate such only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date MMRDA elects to succeed to the interests of the Concessionaire as aforesaid. However, MMRDA shall only succeed interests of the Concessionaire provided;

- (a) MMRDA has no liability whatsoever in respect of acts done by the Concessionaire for any period prior to its stepping in;
- (b) MMRDA has all the benefits of the contract that were available to the Concessionaire prior to MMRDA stepping in;
- (c) The Contract has not been the cause of /resulted in a Concessionaire Event of Default.

All sums claimed by such Contractors as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors and MMRDA shall in no way or manner be liable or responsible for such sums. Notwithstanding the aforesaid the discretion available to MMRDA above shall not be available to MMRDA in the case of an MMRDA Event of Default;

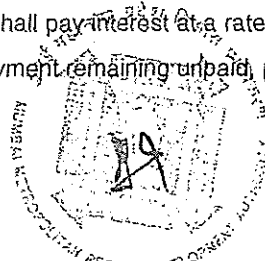


- (v) Performance Security shall be forfeited in case of Termination due to Concessionaire Event of Default.

30.7 Terminations Payments: The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire within 60 (sixty) Days of a demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors, and MMRDA shall also pay the interest accrued on any Debt Due portion of such Termination Payment during this period. In the event of any further delay, MMRDA shall pay interest at a rate equal to SBI PLR plus 2% (two percent) on the amount of Termination Payment remaining unpaid, provided that such delay shall not exceed 120 (one hundred twenty) Days.

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30.8 **Mode of Payment:** Termination Payment by MMRDA pursuant to this Article 30 shall be made by way of credit to the Escrow Account and such payment shall constitute full discharge by MMRDA of its obligations in respect thereof hereunder.

30.9 **Survival of rights**

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

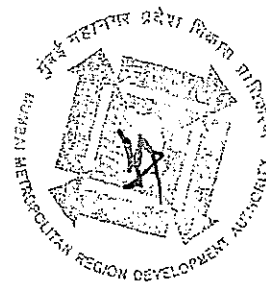
30.10 **Expiry of Concession Period**

The Agreement shall expire on the 35th anniversary of the Appointed Date except to the extent increased or decreased as per the terms of this Agreement and MMRDA or its nominees shall acquire all of Concessionaire's rights, title and interest in and to the Project Assets free of Encumbrances on payment to the Concessionaire a nominal amount of Rs. 1 (Rupee one). For the avoidance of doubt the profits available for dividend distribution and deposits made with utilities in the ordinary course of business shall not form part of the Project Assets.



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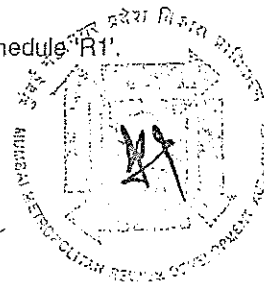
ARTICLE 31
DIVESTMENT OF RIGHTS AND INTERESTS

31.1 Upon Expiry of Concession period, the Concessionaire shall comply with the following:

- (a) notify to MMRDA forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the Project Assets free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the MMRDA for fully and effectively divesting the Concessionaire. of all of the rights, title and interest of the Concessionaire in the MRTS Project and conveying the MRTS Project free of any charge or cost to MMRDA; and
- (c) comply with the Divestment Requirements set out in Article 31.2.

31.2 Upon Expiry of Concession Period, the Concessionaire shall comply and conform to the following Divestment Requirements in respect of the MRTS Project including provisions envisaged at Article 32.2:

- (i) MRTS shall meet the serviceability requirements as stipulated in Schedule Y.
- (ii) the Concessionaire delivers relevant records and reports pertaining to the MRTS Project and its design, engineering, construction, operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto on the Divestment Date;
- (iii) the Concessionaire executes such deeds of conveyance, documents and other writings as the MMRDA may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the MRTS Project free from all Encumbrances absolutely unto the MMRDA or its Nominee; It is agreed that upon expiry of the Concession Period all taxes, costs and statutory duties due on the transfer of the Project Assets leviable post the expiry of the Concession Period shall be paid by MMRDA.
- (iv) the Concessionaire complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all the rights, title and interest of the Concessionaire in the MRTS Project free from all Encumbrances and Taxes payable on or before the Divestment Date to MMRDA or its nominee;
- (v) the Concessionaire shall furnish details in Schedule 'R1'.



31.3 Inspection and Cure

Not earlier than 3 (three) months before the Expiry of the Concession Period but not later than 30 (thirty) Days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) Days from the date of issue of Termination Notice, Independent Engineer, shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Divestment Requirements set forth in Article 31.2 in relation to the MRTS Project and, if required, cause appropriate tests to be carried out at the Concessionaire's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Concessionaire shall cure the same at his cost. The provisions of Article 32 shall apply mutatis mutandis in relation to repair or curing of defects under this Article 31.

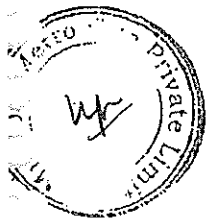
31.4 Vesting Certificate

Upon the Concessionaire conforming to all Divestment Requirements and handing over of the MRTS Project to MMRDA or a person nominated by MMRDA in this regard, MMRDA shall issue a certificate substantially in the form set forth in Schedule 'Q' (the "Vesting Certificate") which will have the effect of constituting evidence of divestment of all rights, title and lien in the MRTS Project by the Concessionaire and their vesting in MMRDA pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by MMRDA. The divestment of all rights, title and lien in the MRTS Project shall be deemed to be complete on the date when all the Divestment Requirements have been fulfilled or the Vesting Certificate has been issued, whichever is earlier, it being expressly agreed that any defect or deficiency in any Divestment Requirement shall not in any manner be construed or interpreted as restricting the exercise of any rights by MMRDA or its nominee on or in respect of the MRTS Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

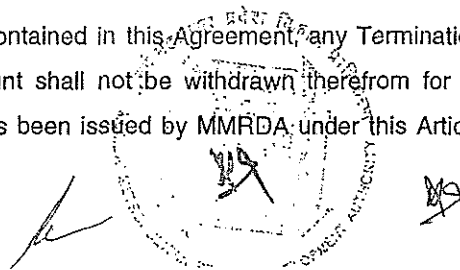
31.5 Upon Termination of this Agreement pre-matured to the completion of Concession Period the Concessionaire shall comply and confirm to the Divestment requirements cited at Sub Article 31.1 (a) &(b) and 31.2 (ii), (iii), (iv) & (v) and hand over the peaceful possession of MRTS site as per sub-Article 31.4 to enable MMRDA to initiate further action envisaged under Divestment Requirements.

31.6 Restriction on withdrawal of Termination Payments

Notwithstanding anything to the contrary contained in this Agreement, any Termination Payments made by MMRDA into the Escrow Account shall not be withdrawn therefrom for any purpose whatsoever until the Vesting Certificate has been issued by MMRDA under this Article. Provided,



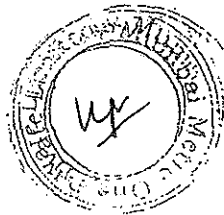
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however, that the aforesaid restriction shall not apply to withdrawals from the Escrow Account in favour of the Senior Lenders to the extent of Debt Due.

31.7 Divestment costs

The Concessionaire shall bear and pay the costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the MRTS Project in favour of MMRDA upon Termination or expiry, as the case may be, save and except that all stamp duties paid by the Concessionaire for executing any deeds or Documents in connection with such divestment shall be reimbursed by MMRDA to the Concessionaire.



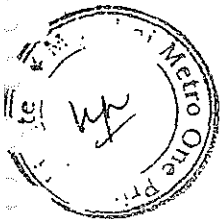
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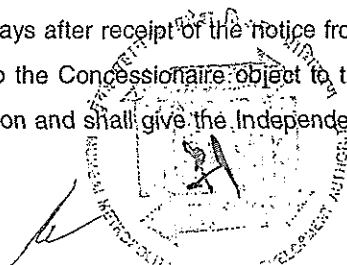
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ARTICLE 32
PRE-DIVESTMENT LIABILITY

- 32.1 Not less than 60 months nor more than 66 months prior to the Expiry of the Concession Period, the Concessionaire and the Independent Engineer shall conduct a joint inspection (the "Initial Inspection") of the MRTS Project and all Project Facilities.
- 32.2 Within 90 Days after the completion of the Initial Inspection of assets carried out to assess their serviceability for a period of 3 to 5 years after the expiry of Concession Period as provided in Schedule Y, the Concessionaire shall provide to the Independent Engineer a report on the condition of the MRTS Project and the Project Facilities and, a notice setting out the Concessionaire's proposals as to the refurbishment works to ensure the serviceability of assets as envisaged in Initial Inspection required to comply with the Divestment Requirements.
- 32.3 The Independent Engineer may, within 90 Days after receipt of the notice from the Concessionaire in accordance with Article 32.2, by notice to the Concessionaire object to the proposals giving details of the grounds for such objection and shall give the Concessionaire proposals in respect of the refurbishment works.
- 32.4 If no agreement is reached between the Concessionaire and the Independent Engineer within 30 Days of receipt of such notice, then either the Concessionaire or MMRDA may refer the matter to the Disputes Resolution Procedure.
- 32.5 Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the refurbish works at its own cost.
- 32.6 Not less than 24 months nor more than 27 months prior to the expiry of the Concession Period, the Concessionaire and the Independent Engineer shall conduct a joint inspection (the "Second Inspection") of all elements of the MRTS Project and Project Facilities (whether or not the refurbishment of Works have been carried out).
- 32.7 Within 30 Days after the completion of the Second Inspection, the Concessionaire shall provide to the Independent Engineer a report on the condition of the MRTS Project and Project Facilities and a notice setting out any revisions or additions to the refurbished works required in order to ensure compliance with the Divestment Requirements.
- 32.8 The Independent Engineer may, within 30 Days after receipt of the notice from the Concessionaire in accordance with Article 32.7, by notice to the Concessionaire object to the proposed revisions giving details of the grounds for such objection and shall give the Independent Engineer proposals



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in respect of such matters.

32.9 If no agreement is reached between the Concessionaire and the Independent Engineer within 30 Days of receipt of such notice, then either the Concessionaire or the MMRDA may refer the matter to the Dispute Resolution Procedure.

32.10 Upon agreement or determination in accordance with the Disputes Resolution Procedure, the Concessionaire shall carry out the refurbished works (as so revised) at its own cost.

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32.11 From the date which is 2 years prior to the expiry of the Concession Period a Bank Guarantee of the sum of Rs. 50 Crores (Rupees ~~1100~~ Crores) in the form and content acceptable to MMRDA shall be furnished by the Concessionaire to MMRDA, to ensure the obligation under this Article can be met with.

32.12 Within 14 Days after the issuance of the Vesting Certificate issued in accordance with Article 31, MMRDA shall release the Bank Guarantee as furnished by the Concessionaire pursuant to Article 32.11 above.



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ARTICLE 33
ASSIGNMENTS AND CHARGES

33.1 Subject to Articles 33.3 and 33.4, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of MMRDA. In the event that MMRDA does not approve such assignment, it shall provide all its reasons in writing.

33.2 Subject to Article 33.3, the Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements except with prior consent in writing of MMRDA. In the event that MMRDA does not approve such assignment, it shall provide all its reasons in writing.

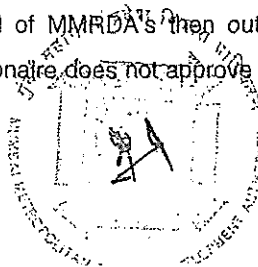
33.3 Restraint set forth in Articles 33.1 and 33.2 shall not apply to:

- (i) liens or Encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the MRTS Project;
- (ii) mortgages/pledges/hypothecation of goods/assets and any other assignment of rights, title, interests and obligations of the Concessionaire other than Project Assets, and those covered by the Substitution Agreement (Schedule P) and their related documents of title arising or created in the ordinary course of business of the MRTS Project and as security only for indebtedness to the Senior Lenders and Subordinate Lenders under the Financing Documents and/or for working capital arrangements for the MRTS Project;

33.4 Senior Lenders may exercise the rights of step-in or substitution as provided in the Substitution Agreement to be entered into among the Concessionaire, MMRDA and Senior Lenders in the form set forth in (Substitution Agreement) Schedule P provided that the person substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Concessionaire. Provided, however, that in the event of such step-in or substitution, an additional Cure Period of 90 (ninety) Days shall be provided by MMRDA to enable the Concessionaire to Cure any breach or default subsisting on the Day of such step-in or substitution.

33.5 Assignment by MMRDA

Notwithstanding anything to the contrary contained in this Agreement, MMRDA may, after giving 60 (sixty) Days' notice to the Concessionaire, assign any of its rights and benefits and/or obligations under this Agreement; to an assignee who is any Governmental Agency or Authority. Where the assignee is any other entity then MMRDA may only assign it provided in the reasonable opinion of Concessionaire such entity is capable of fulfilling all of MMRDA's then outstanding obligations under this Agreement. In the event that the Concessionaire does not approve such assignments, it shall provide all its reasons in writing.



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ARTICLE 34
CHANGE IN LAW

34.1 Increase in costs

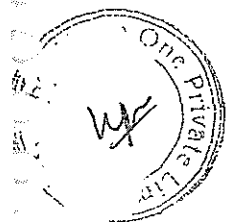
If as a result of one or more Change in Law, the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs. 10 million (Rupees ten million) in any Accounting Year of the Concession Period, the Concessionaire may notify MMRDA and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 15 (fifteen) Days from the date of notice, and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 60 (sixty) Days of the meeting pursuant to this Article 34.1, the Concessionaire, may by notice in writing require MMRDA to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the Statutory Auditors of the Concessionaire. MMRDA shall make payment of such compensation within 15 (fifteen) Days of receiving such notice or with interest @ SBI PLR if the payment thereof is delayed beyond such 15 (fifteen) Days. If MMRDA shall dispute the quantum of such compensation claim of the Concessionaire, the same shall be finally settled in accordance with the Dispute Resolution Procedure. For the removal of doubts it is clarified that any undisputed amounts shall be paid without resorting to dispute resolution.

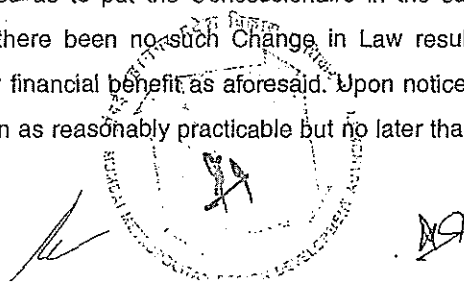
For the removal of doubt it is hereby agreed that if in any accounting year there is less than 12 months then in those years the amount of Rs. 10 Million mentioned above will apply proportionately to the number of months that comprise the accounting year.

34.2 Reduction in costs

If as a result of Change in Law, the Concessionaire enjoys a reduction in costs or increase in net after tax return or other financial benefit, the aggregate financial effect of which exceeds Rs.10 million (Rupees ten million) in any Accounting Year, MMRDA may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notice by MMRDA as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 15 (fifteen)



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Days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

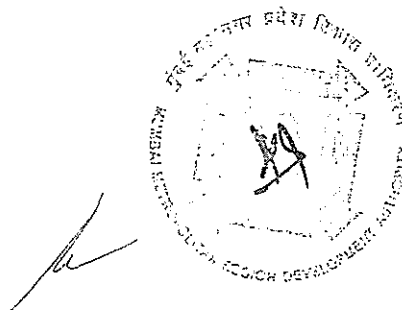
Provided that if no agreement is reached as aforesaid by the Parties within 60 (sixty) Days of the meeting pursuant to this Article 34.2, MMRDA may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the MMRDA Representative. The Concessionaire shall make such payment within 15 (fifteen) Days of receiving such notice or with interest @ SBI PLR if the payment is delayed beyond such 15 (fifteen) Days. If the Concessionaire shall dispute such claim of MMRDA, the same shall be finally settled in accordance with the Dispute Resolution Procedure. For the removal of doubts it is clarified that any undisputed amounts shall be paid without resorting to dispute resolution.

For the removal of doubt it is hereby agreed that if in any accounting year there is less than 12 months then in those years the amount of Rs. 10 Million (Rupees Ten Million) mentioned above will apply proportionately to the number of months that comprise the accounting year.

34.3 Notwithstanding anything to the contrary contained in this Agreement, MMRDA shall not be liable to reimburse to the Concessionaire any sums on account of a Change in Law if the same can be recovered by way of a mutually acceptable revenue generating activity or if the aggregate financial effect of such changes in any Accounting Year is less than or equal to Rs. 10 million (Rupees ten million)



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ARTICLE 35
LIABILITY AND INDEMNITY

35.1 General Indemnity

35.1.1 The Concessionaire will indemnify, defend and hold MMRDA harmless against any and all proceedings, actions and, third party claims (other than a claim by MMRDA or GOI/GOM) for loss, damage and expense of whatever kind and nature a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such breach has arisen due to MMRDA Event of Default or Force Majeure or to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of MMRDA.

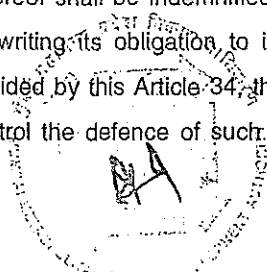
35.1.2 MMRDA will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and or the rights of MMRDA in the land comprised in the Site including MMRDA Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, affiliates, contractors, servants or agents including due to Concessionaire Event of Default.

35.3 Notice and contest of claims

In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 35 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 14 (fourteen) Days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

35.4 Defence of Claims

35.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 34, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or



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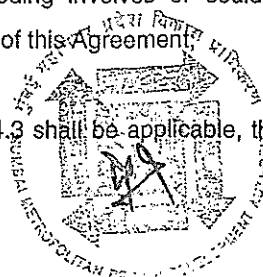
proceeding liabilities, payments and obligations at its expense and through counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

35.4.2 If the Indemnifying Party has exercised its rights under Article 35.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

35.4.3 If the Indemnifying Party exercises its rights under Article 35.3 then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

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

provided that if Articles (ii), (iii) or (iv) of this Article 35.4.3 shall be applicable, the counsel for the



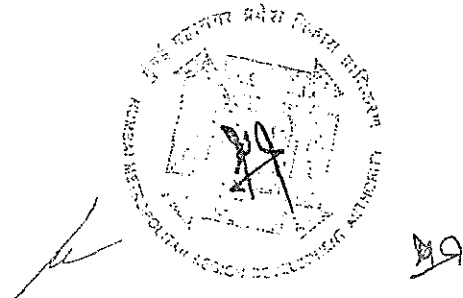
Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party; and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

35.4.5 Notwithstanding anything to the contrary contained herein nothing in the indemnity shall apply to the events, the effect of which or the remedies for which have been provided elsewhere in this Agreement.



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ARTICLE 36
RIGHTS AND TITLE OVER THE SITE

36.1 Exclusive rights

The Concessionaire shall have exclusive rights for the development of and the use of MRTS Project and the land pursuant to such project and handed over in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the MRTS Project by third parties.

36.2 Access right of MMRDA and others

36.2.1 The Concessionaire shall allow access to, and use of the land handed over for telegraph lines, electric lines or such other public purposes as MMRDA may specify. Such Site access shall not compromise the safety and security of the Site. Where such access or use causes any damage to the MRTS Project or consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the handed over land as per Applicable Laws.

36.2.2 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of MMRDA, and the Independent Engineer and for the persons and vehicles authorized by any Governmental Agency to inspect the MRTS Project and to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

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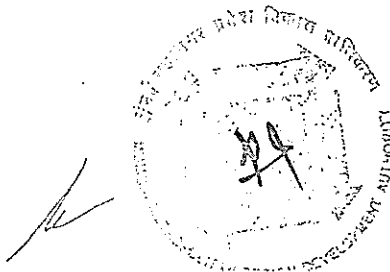
36.4 Restriction on sub-letting

The Concessionaire shall not sublet the whole or any part of the Site save and except as may be expressly set forth in this Agreement provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to allow Contractors or any other authorised third party being sub-contractors, consultants or other advisors to the Project to enter and use the whole or part of the Site for the performance of its obligations hereunder including for operation and maintenance of all or any part of the MRTS Project including Project Facilities.



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ARTICLE 37
DISPUTE RESOLUTION

37.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-Article (b) below.
- (b) The Parties shall use their reasonable efforts to reach an amicable solution by means of direct negotiation in the event of any Dispute. If the Parties do not reach an agreement within 30 (thirty) Days as from the date that the interested Party notifies its intention to solve the Dispute in an amicable manner then the Parties may refer such Dispute to arbitration in accordance with Article 37.2.

37.2 Arbitration

- 37.2.1 Arbitration shall be held in Mumbai in accordance with the Arbitration and Conciliation Act, 1996. Each Party shall co-operate in good faith to expedite, to the maximum extent practicable, the conduct of any arbitral proceedings commenced under this Agreement.

There shall be a panel of three arbitrators with MMRDA and the Concessionaire each appointing one arbitrator, and the two arbitrators so appointed shall jointly appoint the third arbitrator, who shall be the presiding arbitrator and shall chair the arbitration panel. If the arbitrators named by the Parties do not agree on the appointment of the third arbitrator within thirty (30) Days after the latter of the two arbitrators named by the Parties has been appointed, the third arbitrator shall be appointed by the High Court of Bombay,

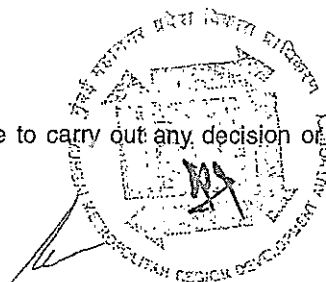
- 37.2.2 The venue of such arbitration shall be Mumbai, India.

- 37.2.3 Notwithstanding the pendency of any dispute either before the arbitration panel or before any court of law, both Parties shall continue to discharge their obligations under this Agreement and in relation to the Project.

37.3 Arbitration Awards to be binding

- 37.3.1 The Concessionaire and MMRDA undertake to carry out any decision or award of the arbitrators

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(the "Award") without delay. Awards relating to any Dispute shall be final and binding on the Parties as from the date they are made.

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



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ARTICLE 39
REDRESSAL OF PUBLIC GRIEVANCES

39.1 Complaints Book

The Concessionaire shall operate and maintain a toll free number for recording of complaints by any user (the "Complainant") during normal hours of operations. In addition, the Concessionaire shall also operate and maintain a website whereby any of the user can register their complaint through the internet. Information relating to such toll free number and the website shall be prominently displayed by the Concessionaire at each Station so as to bring it to the attention of all users. In addition a Complaint Box shall be provided at all stations.

Immediately after a complaint is registered on the website and/or the toll free number, the Complainant shall be provided with a complaint number, which the Complainant may refer to in any subsequent correspondence or claim.

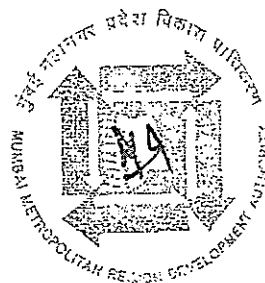
39.2 Redressal of complaints

Within 7 (Seven) working Days of registering the complaint, the Concessionaire shall take all necessary action to address the concerns of the Complainant. In the event that the Complainant is not satisfied with the action taken by the Concessionaire, then the Complainant may make a representation to MMRDA. MMRDA may upon receiving any such representation, in its discretion, direct the Concessionaire to take such further reasonable action, as MMRDA may deem appropriate for a fair and just redressal of any grievance.



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ARTICLE 40
GOVERNING LAW AND JURISDICTION

40.1 Governing law and jurisdiction

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



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ARTICLE 41
MISCELLANEOUS

41.1 Project Documentation

At the end of the Construction Period, the Concessionaire shall provide the following project documentation to MMRDA;

- (a) The Concessionaire shall maintain adequate video recording of the project implementation during the Construction period and provide a detailed technical film of 90 (ninety) minutes duration, covering all the aspects of Project implementation within 30 (thirty) Days from the COD;
- (b) Detailed technical reports, covering all the aspects of the Project implementation.

41.2 Waiver

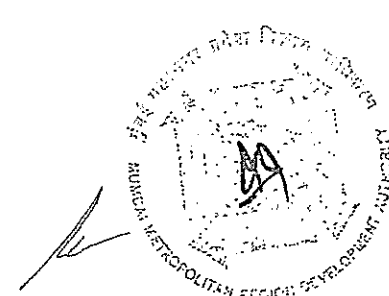
41.2.1 Waiver, including partial or conditional waiver, by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement.

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

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



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41.3 **Survival**

41.3.1 Termination or Expiry of this Agreement shall:

- (a) not relieve the Concessionaire or MMRDA of any obligations hereunder which expressly or by implication survives Termination or Expiry as the case maybe hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or Expiry as the case maybe or arising out of such Termination or Expiry.

41.3.2 All obligations surviving the cancellation, expiration or Termination of this Agreement shall only survive for a period of 5 (five) years following the date of such Termination or Expiry of this Agreement.

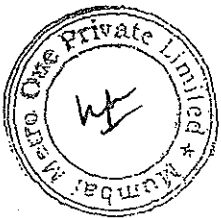
41.4 **Entire Agreement**

This Agreement and the Schedules constitute the full complete and exclusive statement of the terms and understanding of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by both the Parties and executed by both the Parties..

41.5 **Notices**

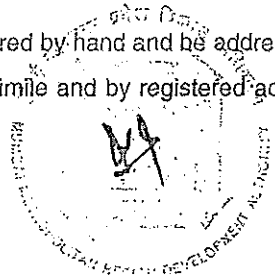
Any notice or other communication to be given by Party to the other Party under, or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by letter delivered by hand to the address given and marked for the attention of the person set out opposite the corresponding signature below or to such other address marked for such other attention as the Concessionaire may from time to time designate by notice to MMRDA, provided that notices or other communications to be given to an address outside Mumbai may (if they are subsequently confirmed by sending a copy thereof by first class registered airmail or by courier) be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to MMRDA; and
- (b) in the case of MMRDA, be given by letter delivered by hand and be addressed to the MMRDA. Copies of all notices shall also be sent by facsimile and by registered acknowledgement due



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pre-paid post or courier.

Copies of all notices shall also be sent to the MMRDA Representative.

41.6 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing 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.

41.7 No Partnership

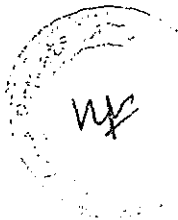
Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever.

41.8 Language

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

41.9 Exclusion of Implied Warranties etc.

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



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IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THIS DATE ABOVE WRITTEN

SIGNED, SEALED AND DELIVERED

For and on behalf of MMRDA

By

T. Chandra Shekar (Signature)

Dr. T. Chandra Shekar (Name)

Metropolitan Commissioner (Designation)

For and on behalf of Concessionaire

By

For Mumbai Metro One Private Limited

J.P. Chalasani (Signature)

J. P. Chalasani Director (Name)

Director (Designation)

In the presence of

1. *[Signature]*

2. *[Signature]*

SUJAIN TALWAR

