

GOVERNMENT OF ODISHA

COMMERCE & TRANSPORT DEPARTMENT

STATE TRANSPORT AUTHORITY

**AUTOMATION OF DRIVING TEST TRACK CENTRES FOR 2-
WHEELERS AND 3/4-WHEELERS ON BUILD OWN
OPERATE TRANSFER (BOOT) BASIS IN THE STATE OF
ODISHA**

(NATIONAL COMPETITIVE BIDDING)

2015

REQUEST FOR PROPOSAL

ISSUED BY:

**STATE TRANSPORT AUTHORITY
6TH FLOOR, RAJASWA BHAWAN,
CUTTACK.**

*CONTRACT
DOCUMENT*

Concession Agreement

Part I

Preliminary

CONCESSION AGREEMENT

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

AMONGST

State Transport Authority, Government of Odisha represented by _____ and having its principal office at Cuttack (hereinafter referred to as the "**Concessing Authority**") which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of First Part;

AND

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

WHEREAS:

- (A) The Concessing Authority had resolved for Development of Automated Driving Test Tracks Centres for 2-Wheelers and 3/4 Wheelers and the Operation & Maintenance thereof in the State of Odisha (hereinafter called the "**Project**") on build, own, operate and transfer ("**BOOT**") basis in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.
- (B) The Concessing Authority, had accordingly invited bids by its Tender Notice/ Request for Proposal dated (the "Request for Proposal" or "RFP") prescribing the technical and commercial terms and conditions for short-listing of bidders and selection of bidder for Development of Driving Test Tracks Centres for 2-Wheelers and 3/4 Wheelers and Operation & Maintenance thereof on BOOT basis.
- (C) After evaluation of the bids received, the Concessing Authority, had accepted the bid of the {selected bidder} and issued its Letter of Award No. Dated (hereinafter called the "LOA") to the selected bidder requiring, inter alia, the execution of this Concession Agreement within 60 (sixty) days of the date of receipt thereof.
- (D) The selected bidder has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 1956, and has requested the Concessing Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

- (E) By its letter dated, the Concessionaire has also joined in the said request of the selected bidder to Concessioneing Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder including the obligation to enter into this Concession Agreement pursuant to the LOA.
- (F) The Concessioneing Authority has agreed to the said request of the selected bidder and the Concessionaire, and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on BOOT basis, subject to and on the terms and conditions set forth hereinafter.

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

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 42) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or reenactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Odisha, laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a "person" and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, services, equipment, software development, IT infrastructure including hardware and software, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;

- (g) references to "development" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, up-gradation and other activities incidental thereto, and "develop" shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (i) any reference to day shall mean a reference to a calendar day;
- (j) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Odisha are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- (q) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (r) references to the "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, re-organisation, dissolution, arrangement, protection or relief of debtors;
- (s) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as

to increase liabilities or obligations of the Government hereunder or pursuant hereto in any manner whatsoever;

- (t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, as the case may be, in this behalf and not otherwise;
- (u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (v) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages"); and
- (x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3 Measurements and arithmetic conventions

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

1.4 Priority of Agreements, clauses and schedules

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

- (a) this signed Concession Agreement (including its Schedules) along with any Addendums/ Corrigendum's/ Clarifications issued to the RFP document dated ____; and
- (b) all other agreements and documents forming part hereof or referred to herein; i.e. the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

Part II

The Concession

ARTICLE 2 SCOPE OF THE PROJECT

2.1 Scope of the Project

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

- (a) Construction (except driving test tracks, administrative building, boundary wall, campus lighting), Development, Upgradation of the Project at the Site(s) set forth in Schedule-A and as specified in Schedule-B, and in conformity with the Specifications and Standards set forth. The Concessionaire will provide air-conditioning, electricity, networking, connectivity in the administrative building for the area being used by him for daily operations.
- (b) The Concessionaire shall operate and maintain the Project in accordance with the provisions of this Agreement; and
- (c) Performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

**ARTICLE 3
GRANT OF CONCESSION**

3.1 The Concession

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Concessioneing Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to develop, construct, operate and maintain the Project (the "**Concession**") for a period of 10 (ten) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) Right of Way, access and licence to the Project Sites for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) Finance and construct the Project at Project Site(s);
 - (c) Manage, operate and maintain the Project and regulate the use thereof by third parties;
 - (d) Demand, collect and appropriate User Fee, as per Article 27, from Users liable for payment of User Fee (more specifically detailed out in Schedule-R) for using the Project or any part thereof and refuse entry of any such User if such User Fee due are not paid;
 - (e) Perform and fulfill all of the Concessionaire's obligations under and in accordance with this Agreement;
 - (f) Bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
 - (g) Neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

- 4.1.1 Save and except as expressly provided in Articles, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**").
- 4.1.2 The Concessionaire may at any time after 90 (ninety) days from the date of this Agreement or on an earlier day acceptable to the Concessioneing Authority, by notice require the Concessioneing Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 30 (thirty) days of the notice, or such longer period not exceeding 60 (sixty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Concessioneing Authority shall be deemed to have been fulfilled when the Concessioneing Authority shall have:
- (a) Completed the construction of civil infrastructure (i.e the testing tracks, boundary wall, campus lighting etc) of the Driving Test Tracks, at each Project Site. It is being clarified here that the construction of the Driving Test Tracks Centres at each Project Site is ongoing, the Concessioneing Authority shall make endeavour to hand over all the Project Sites. However, if any of the Project Site is not completed, the other completed Project Sites shall be handed over to the Concessionaire for further upgradation/ development purposes and remaining Project Site(s) shall be handed over to Concessionaire as & when completed. Hence any delay in handing over of any of the Project Site shall not be construed as non-compliance of this Condition Precedent;
 - (b) Handed over the possession of the Project Sites, free of cost, to the Concessionaire, in accordance with the provisions of Clause 11.3.1;
 - (c) Issued the User Fee Notification, as detailed out in Schedule-R; and
 - (d) Approved the Project Report submitted by the Concessionaire, within a period of 15 (fifteen) days from the date of receipt.
- 4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) Executed and procured execution of the Substitution Agreement;
 - (b) Prepared and submitted the Project Report for the Project, wherein the details pertaining to the complete set up of the Automated Driving Test Tracks Centres, design, layout, infrastructure, procurement process, construction and completion schedule being proposed for Administrative Building, software/ hardware development, IT infrastructure & related connectivity etc at each Project Site etc have been provided, within a period of 01 (one) month from the date of signing of this Agreement; The Concessionaire shall be required

- to incorporate the comments (if any) from the Concessing Authority in the Project Report and thereby, submit the revised Project Report to the Concessing Authority, for approval, within a period of 10 (ten) days from the date of receipt of comments from the Concessing Authority.
- (c) Procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect. The Concessing Authority will extend necessary administrative help to Concessionaire in procuring Applicable Permits from various Government Departments;
 - (d) Procured financial close and executed the Financing Agreements and delivered to the Concessing Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
 - (e) Delivered to the Concessing Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
 - (f) Delivered to the Concessing Authority confirmation, in original, of the correctness of their representation and warranties set forth in Sub-clauses (k), (l) and (m) of clause 7.1 of this Agreement; and
 - (g) Delivered to the Concessing Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the Concessionaire, the Concessing Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Concessing Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

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

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

4.2 Damages for delay by the Concessing Authority

In the event that

- (a) the Concessing Authority does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and

- (b) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Concessions Authority shall increase the Concession Period as per the below stated formula:

Number of days to be increased in Concession Period = $\frac{1}{32} * (D1+D2+D3+\dots+D32)$

Where D = Delay in number of days for fulfilling the Conditions Precedent

4.3 Damages for delay by the Concessionaire

In the event that

(a) the Concessionaire does not procure fulfillment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 90 (ninety) days from the date of this Agreement, and

(b) the delay has not occurred as a result of failure to fulfill the obligations under Clause 4.1.2 or other breach of this Agreement by the Concessions Authority, or due to Force Majeure,

the Concessionaire shall pay to the Concessions Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfillment of such Conditions Precedent, subject to a maximum of 10% (ten per cent) of the Performance Security. The concessionaire will be free from all the damages for any delay due to any of the government agency or agency authorized by Transport Department, Government of Odisha.

ARTICLE 5
OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, upgradation, (except driving test tracks, administrative building, boundary wall, campus lighting), equipment, software development, IT infrastructure including hardware and software, services, operation and maintenance of the Project and observe, fulfill, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws. The Concessioning Authority will extend help in procuring applicable Permits from various Government Departments;
 - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, equipments, processes and systems used or incorporated into the Project;
 - (c) perform and fulfill its obligations under the Financing Agreements;
 - (d) obtain and procure the requisite statutory permissions from the competent authorities under the Applicable Laws in respect of all the Project Sites relating to electrical equipments and electric supply, safety measures including fire safety fighting and other services for the development, implementation and to make the Project Sites functional in all respects, including arranging requisite service connections from the competent authorities/ Instrumentalities of the concerned Departments.
 - (e) provide complete set up, at all 38 (Thirty Eight) Project Sites, for conducting Automated Driving Tests for 2-Wheelers and 3/4 Wheelers, including software

development, IT infrastructure including hardware and software and connectivity for such system etc. However, in case there is any further addition of new sites (but not exceeding a total of 45) during the subsistence of the Concession Period, the cost for the complete construction (as would be expanded by both the Concessioneing Authority and Concessionaire as certified by the Concessioneing Authority) shall be borne by the Concessioneing Authority. The Concessionaire shall only provide the IT infrastructure, software and hardware system including necessary connectivity and the additional manpower for such new sites;

- (f) develop, install and implement necessary software including the necessary database software to successfully implement registration, capture the physical driving test in video streaming format with capability to replay and webcast all the Project Sites, various test results etc and commissioning the system. The Concessionaire shall, also, maintain/ store the recording for atleast 6 (six) months after the completion of driving tests;
- (g) supply and install all kind of hardware, system software, other peripherals and items necessary for the establishment of the system;
- (h) develop a software application for enrolment w.r.t driving tests to be conducted for all categories of vehicles and have test evaluation criteria such as time duration for completing the test on each type of track; number of hits at the curves during the test on each of the track; number of times the reverse gear has been applied except for the parallel parking test; number of times the vehicles has been stopped during the test on each of the track etc.
- (i) develop a system having a mechanism for the digital approval/ rejection of application based on the driving tests. Also, the captured photograph taken before conducting the driving test should be printed on the Test Certificates for all the Users;
- (j) provide biometric system at each of the Project Sites and the software system being installed shall be scalable in order to capture the biometrics of the successful Users in the Driving Tests;
- (k) ensure that the entire system developed, at each Project Site, is integrated with the present online application system ("SARATHI") of the Government;
- (l) integrate the software system developed for the Project with the Operator selected by the Government for the existing e-governance project on BOOT basis;
- (m) develop an online payment mechanism, wherein before issuing the receipt of Driving Test to the User, the requisite share of Government/ Concessioneing Authority (if any) and the Concessionaire's Share in User Fee is credited to the accounts of their respective accounts;

- (n) demand and collect requisite User Fee from the Users appearing for the Driving Tests for 2-Wheeler, 3/4 Wheelers and both 2-Wheeler and 3/4 Wheelers;
- (o) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
- (p) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
- (q) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
- (r) support, cooperate with and facilitate the Government in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (s) transfer the Project along with the source codes and database structures to the Government when the Project becomes operational and also, upon Termination of this Agreement, in accordance with the provisions thereof. Also, the Concessionaire shall share with the Government any Updation being carried out in the source codes/ database structures, as and when completed.

5.2 Obligations relating to Project Agreements

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Concessioneing Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Government shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Government a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Concessioneing Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the

Concessions Authority. No review and/ or observation of the Concessions Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Concessions Authority be liable for the same in any manner whatsoever.

- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Concessions Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Concessions Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Concessions Authority. For the avoidance of doubt, the Concessions Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the debt of the Concessionaire.
- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Concessions Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “**Covenant**”). For the avoidance of doubt, it is expressly agreed that in the event the Government does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Concessions Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Concessions Authority an acknowledgment and undertaking, in a form acceptable to the Concessions Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Concessions Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Concessions Authority from national security and public interest perspective, the decision of the Concessions Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Concessions Authority. For the avoidance of doubt, it is expressly agreed that approval of the Concessions Authority hereunder shall be limited to national security and public interest perspective, and the Concessions Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the

Concessioning Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership.

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their subcontractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or subcontractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained and appropriately skilled for their respective functions. The Concessionaire shall be liable for all the activities of the personnel supplied by him. They shall be qualified to conduct the Driving Tests and also, keep the Driving Test Tracks Centres properly functional and shall use all reasonable care to maintain this system in efficient, reliable and safe operating conditions.

5.6 Sole purpose of the Concessionaire

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

ARTICLE 6
OBLIGATIONS OF THE CONCESSIONING AUTHORITY

6.1 Obligations of the Concessioneing Authority

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

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

- (a) procured all Applicable Permits/ Clearances relating to environment protection and conservation of Site(s);
- (b) obtain all necessary clearances and/ or approval for construction of Project from competent authorities;
- (c) upon written request from the Concessioneaire, and subject to the Concessioneaire complying with Applicable Laws, provide reasonable support and assistance to the Concessioneaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project;
- (d) upon written request from the Concessioneaire, provide access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessioneaire than those generally available to commercial customers receiving substantially equivalent services;
- (e) procure that no barriers are erected or placed on or about the Project Site(s) by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security or law and order;
- (f) pay any/ all applicable taxes/ charges, if imposed on the land earmarked and provided to the Concessioneaire;
- (g) establish a scoring pattern/ regulations/ passing criteria with regard to the driving tests and thereby, finalised and notified by the Transport Commissioner, Odisha;
- (h) may set up driving training centres or any other facility at any of the ADTT Centres and the capital cost for the same shall be borne by the Concessioneing Authority. Here, the area within the ADTT centres shall be earmarked and shall not be under the control of the Concessioneaire.
- (i) subject to and in accordance with the Applicable Laws, grant to the Concessioneaire the authority to regulate traffic on the Project Site(s);
- (j) assist the Concessioneaire in procuring police assistance for regulation of traffic, removal of trespassers and security on or at the Project Site(s);
- (k) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

- (l) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (m) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Concessions Authority shall maintain the Project Site(s), at its own cost and expense. For the avoidance of doubt, the Concessions Authority shall undertake only routine maintenance during the Development Period and it shall undertake repairs only in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rains.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Concessions Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership;
- (l) the selected bidder and its Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) the selected bidder is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Concessioneing Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Government on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Government, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Concessioneing Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Government in connection therewith; and
- (q) all information provided by the selected bidder in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2 Representations and Warranties of the Concessioneing Authority

The Concessioneing Authority represents and warrants to the Concessionaire that:

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

7.3 Disclosure

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

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Specifications and Standards, Project Sites, existing structures, local conditions, physical qualities of ground, subsoil and geology, extent of Users (applicants for Driving licensee) and all information provided by the Concessioneing Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Concessioneing Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/ or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Government in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Concessioneing Authority shall not be liable for the same in any manner whatsoever to the Concessionaire or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement, or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Concessioneing Authority to give any notice pursuant to this

Clause 8.1.4 shall not prejudice the disclaimer of the Government contained in Clause 8.1.1 and shall not in any manner shift to the Government any risks assumed by the Concessionaire pursuant to this Agreement.

- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Concessing Authority shall not be liable in any manner for such risks or the consequences thereof.

Part III

Development and Operations

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

- 9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Concessions Authority, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Rs. 1 crore (Rupees one crore only) in the form set forth in Schedule-F (the "**Performance Security**") within 45 days from receipt of LOA. Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Concessions Authority shall release the Bid Security to the Concessionaire.
- 9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within the stipulated time period, the Concessions Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Concessions Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level of the applicable Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the Government shall be entitled to terminate this Agreement in accordance with Article 31. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Concessions Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 31.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for the entire Concession Period. Upon completion of 6 (six) months after end of the Concession Period and thereby, request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements laid down in the Concession Agreement, the Concessions Authority shall release the Performance Security forthwith.

ARTICLE 10 ROYALTY

10.1 Royalty

The Concessionaire shall pay to Govt. Of Odisha (Concessions Authority), monthly in arrears for each month during the Concession period, Royalty equal to 10 (Ten) percent of the Gross Revenue earned by the Concessionaire during the relevant month. The Concessionaire shall pay to the Concessions Authority, the Royalty for each calendar month within 7 (seven) days from the end of that month.

ARTICLE 11 RIGHT OF WAY

11.1 The Project Sites

The sites of the Project shall comprise the real estate and in respect of which the Right of Way/ possession shall be provided and granted by the Concessions Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "**Project Sites**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Sites shall be construed as references to the real estate required for construction and implementation of the Project as the Project Sites as set forth.

11.2 Licence, Access and Right of Way

11.2.1 The Concessions Authority hereby grants to the Concessionaire access to the Sites for carrying out any surveys, investigations that the Concessionaire may deem necessary during the Development Period, it being expressly agreed and understood that the Concessions Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

11.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Concessions Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed

Date, leave and licence rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Project Sites which are described, delineated hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the duration of the Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

11.2.3 The licence, access and right of way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way.

11.2.4 It is expressly agreed that the licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Concessions Authority to terminate the licence, upon the Termination of this Agreement for any reason whatsoever. For the avoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Project Sites by the Concessionaire or its sub-licensees, the licence in respect of the Project Sites shall automatically terminate, without any further act of the Parties, upon Termination of this Agreement.

11.2.5 The Concessionaire hereby irrevocably appoints the Concessions Authority (or its nominee) to be its true and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorised officer of the Concessions Authority, and the Concessionaire consents to it being registered for this purpose.

11.2.6 It is expressly agreed that trees on the Project Site(s) are property of the Concessions Authority except that the Concessionaire shall be entitled to exercise satisfactory rights thereon during the Concession Period.

11.3 Procurement of the Site

11.3.1 Pursuant to the notice specified in Clause 4.1.2, the Concessions Authority Representative and the Concessionaire shall, on a mutually agreed date and time, inspect the Project Sites and prepare a memorandum for each Project Site containing an inventory of the Project Site(s) including the vacant and unencumbered land, structures, road works, trees and any other immovable property on or attached to the Project Site(s). Such memorandums shall have appended thereto an appendix (the "Appendix") specifying in reasonable detail those parts of the Project Sites to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum for each Project Site, in two counterparts (each of which shall constitute an original), by

the authorised representatives of the Parties shall, subject to the provisions of Clause 11.2.2, be deemed to constitute a valid licence and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Project Site during the Concession Period under and in accordance with the provisions of this Agreement and for no other purpose whatsoever. For the avoidance of doubt, it is agreed that valid licence and Right of Way with respect to the parts of the Site as set forth in the Appendix for each Project Site shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Concessions Authority to the Concessionaire.

11.3.2 On and after signing the memorandum referred to in Clause 11.3.1, and until the Transfer date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation to the Concessions Authority and undertakes its removal at its cost and expenses.

11.4 Sites to be free from Encumbrances

Subject to the provisions of Clause 11.3, the Project Sites shall be made available by the Concessions Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Government on account of any costs, compensation, expenses and charges for the acquisition and use of such Project Sites for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances. It is further agreed that the Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Project Sites.

11.5 Protection of Sites from encroachments

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

11.6 Special/ temporary right of way

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

11.7 Access to the Concessions Authority

The licence, right of way and right to the Project Sites granted to the Concessionaire hereunder shall always be subject to the right of access of the Concessions Authority / existing BOOT Operator and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement and any other obligation stipulated by the Concessions Authority.

11.8 Geological and archaeological finds

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

ARTICLE 12
AUTOMATION OF THE PROJECT

12.1 Obligations prior to commencement of automation

Prior to commencement of Automation Works, the Concessionaire shall:

- (a) appoint its representative duly authorised to deal with the Concessions Authority in respect of all matters under or arising out of or relating to this Agreement;
- (b) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of automation under and in accordance with this Agreement, the Applicable Laws and Applicable Permits; and
- (c) make its own arrangements for procurement and installation of hardware and software items needed for the Project under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Automation Period, the Concessionaire shall maintain, at its cost, the existing Project Site(s) of the Project (including driving test tracks, boundary wall and campus lighting etc) and shall undertake the minor repair and maintenance works for this purpose; and conforms to Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safety, structural stability and safe operation of the Project.

12.3 Drawings & Proposals

In respect of the Concessionaire's obligations with respect to the Drawings of the Project as set forth in Schedule-H, 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 and Proposals (relating to equipment to be provided and installed, services, software development, IT infrastructure with hardware and software) to the Concessions Authority for review;
- (ii) By submitting the Drawings and proposals for review to the Concessions Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, are in conformity with the Scope of the Project and the Specifications and Standards;
- (iii) Within 15 (fifteen) days of the receipt of the Drawings and Proposals, the Concessions Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with

the Scope of the Project and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Concessioneing Authority on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue software development and IT Infrastructure works at its own discretion and risk;

- (iv) If the aforesaid observations of the Concessioneing Authority indicate that the Drawings and Proposals are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings and Proposals shall be revised by the Concessionaire and resubmitted to the Concessioneing Authority for review. The Concessioneing Authority shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (v) No review and/ or observation of the Concessioneing Authority and/ or its failure to review and/ or convey its observations on any Drawings and Proposals shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Concessioneing Authority be liable for the same in any manner;
- (vi) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Concessioneing Authority for review and comments, its proposal of equipment to be provided and installed, layout of services, software development, IT infrastructure etc, and the Concessioneing Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings and Proposals. The provisions of this Clause 12.3 shall apply mutatis mutandis to the review and comments hereunder; and
- (vii) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Concessioneing Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Concessioneing Authority, reflecting the Project as actually designed, and automated including equipment provided and installed, layout of services, It infrastructure including hardware and software.

12.4 Completion of the Project

- 12.4.1 On or after the Appointed Date, the Concessionaire construct the Project along with all services, software development, It infrastructure including hardware and software and make them functional in all respects (including commercial components) as per provisions of this Agreement within 180 (one hundred and eighty) days from "**Site Handover Date**". The 180th day (three hundred and eightieth day) from the "Site Handover Date" shall be the scheduled date for completion of the Project Sites (the "**Scheduled Completion Date**") and the Concessionaire agree and undertakes that development work for all the Project Sites shall be completed and functional on or before the Scheduled Completion Date. Pursuant to the completion of the Driving Test Tracks by the

Concessions Authority, the Concessionaire shall have the discretion to start conducting Driving Test subject to the installation of IT Infrastructure including CCTV cameras, the software and hardware setup etc and construction of temporary administrative building.

- 12.4.2 The Concessionaire shall automate the Project in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Government, it shall pay Damages to the Concessions Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved to a maximum of 10% of the Performance Security; provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Project Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Government to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.
- 12.4.3 In the event that the Project is not completed within 90 (ninety) days from the Scheduled Project Completion Date, unless delay is on account of reasons solely attributable to the Concessions Authority or due to Force Majeure, the Concessions Authority shall be entitled to terminate this Agreement.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

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

13.2 Inspection

During the Construction/ Automation Period, the Concessions Authority may designate an Officer to inspect all the Project Sites at least once a month and who would make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Concessions Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the designated Officer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

13.3 Tests

13.3.1 For determining that the Construction/ Automation Works and services conform to the Specifications and Standards, the Concessions Authority shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 20% (twenty per cent) of the quantity and/ or number of tests, relevant Indian Standards for the construction works, services, equipment to be provided and installed. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Concessions Authority and furnish the results thereof to the Concessions Authority. One half of the costs incurred on such tests, and to the extent certified by the Concessions Authority as reasonable, shall be reimbursed by the Concessions Authority to the Concessionaire. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction/ automation shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, services, and equipment

provided and installed the Concessionaire shall carry out remedial measures and furnish a report to the Concessioneing Authority in this behalf. The Concessioneing Authority shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works, services and equipment as provided and installed into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works, services and equipment as provided and installed conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Concessioneing Authority forthwith.

13.3.3 The provisions of Clause 13.3.1 and 13.3.2 shall apply mutatis mutandis to the checking and testing of software development, IT Infrastructure including hardware and software.

13.4 Delays during automation

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Concessioneing Authority shall have reasonably determined that the rate of progress of Automation Works is such that Project Completion is not likely to be achieved by the Scheduled Project Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Concessioneing Authority in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

13.5 Suspension of unsafe Construction/ Automation Works and services

13.5.1 Upon recommendation of the designated Officer to this effect, the Concessioneing Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works, services, equipment if, in the reasonable opinion of the Government, such work threatens the safety of the Users and staff at site.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works, services, equipment or any part thereof for such time and in such manner as may be specified by the Concessioneing Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the designated Officer to inspect such remedial measures forthwith and make a report to the Concessioneing Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the designated Officer, the Concessioneing Authority shall either revoke such

suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Concessions Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

- 13.5.3 Subject to the provisions of Clause 28.7, all reasonable costs incurred for maintaining and protecting the Construction/ Automation Works or services or equipment or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Concessions Authority, the Preservation Costs shall be borne by the Concessions Authority.
- 13.5.4 If suspension of Construction Works or services or equipment is for reasons not attributable to the Concessionaire, the designated Officer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Concessions Authority accordingly whereupon the Concessions Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the designated Officer. In the event that the Scheduled Project Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Project Completion Date.

ARTICLE 14 COMPLETION CERTIFICATE

14.1 Tests

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

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

14.2 Completion Certificate

Upon completion of Automation Works, including equipment, IT infrastructure, services and the designated Officer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Concessions Authority a certificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**").

14.3 Provisional Certificate

14.3.1 The designated Officer may, at the request of the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "**Provisional Certificate**") if the Tests with respect to the functionality of the Driving Test Tracks Centres are successful and the Project can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an

event, the Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the designated Officer and the Concessionaire (the "**Punch List**"); provided that the designated Officer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Concessions Authority.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project, if the equipment, IT infrastructure including Hardware and System Software and the Driving Test Tracks Centres has been certified to have passed the tests as required under the provisions of this Agreement.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of the Provisional Certificate and for any delay thereafter, other than for reasons solely attributable to the Concessions Authority or due to Force Majeure, the Concessions Authority shall be entitled to recover Damages from the Concessionaire to be calculated and paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two per cent) of the cost of completing such items as estimated by the designated Officer for all the Project Sites. The damages ascertained will be maximum to the limit of 10% of Performance Security. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period not exceeding 90 (ninety) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Concessions Authority or due to Force Majeure, the completion date thereof shall be determined by the designated Officer in accordance with Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the designated Officer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Concessions Authority, shall entitle the Concessions Authority to suspend the Commercial Operation at the Project Sites and/ or terminate this Agreement.

14.5 Withholding of Provisional Certificate

14.5.1 If the designated Officer determines that any Project Site or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliably placed in commercial operation, it shall forthwith make a report in this behalf and send copies thereof to the Concessions Authority and the Concessionaire.

Upon receipt of such a report from the Concessioneing Authority and after conducting its own inspection, if the Concessioneing Authority is of the opinion that the Project Site is not fit and safe for commercial service, it shall, within 7 (seven) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Site and direct the designated Officer to withhold issuance of the Provisional Certificate. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies and thereupon Tests shall be undertaken in accordance with this Article 14. Such procedure shall be repeated as necessary until the defects or deficiencies are rectified.

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

14.6 Rescheduling of Tests

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

ARTICLE 15 ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Automation and functional operation of the Project shall be deemed to be completed when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 13. The Project shall be deemed to enter into commercial service from the date of issuance of Completion Certificate in accordance with the provisions of Article 13.2. When the Completion Certificate for the Project is issued, the date of such certificate shall be deemed to be the Commercial Operations Date (COD) for the Project. For the avoidance of doubt, it is clarified that the Concessionaire shall be entitled to demand and collect the User Fees in accordance with the provisions of Article 24 for the individual Project Site for which such Provisional Completion Certificate is issued.

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 61st (sixty first) day from the Scheduled Project Completion Date, unless the delay is on account of reasons solely attributable to the Concessioneing Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Concessioneing Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved to a maximum limit of 10% of Performance Security. Such damages are besides the damages payable to the Concessioneing Authority by the Concessionaire on non-completion of individual Project Site as per Clause 13.4.1 of this Agreement.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

- 16.1.1 The Concessing Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement ("**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 and the costs thereof shall be expended by the Concessionaire and reimbursed to it by the Concessing Authority in accordance with Clause 16.3. However, the Change of Scope shall at no time, include the development of Driving Test Tracks Centres for new sites (not exceeding a total of 45), costs for which shall be expended or arranged to be expended, entirely by the Concessing Authority.
- 16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, or meeting any other objectives of the Project more satisfactorily, it shall by notice in writing require the Concessing Authority to consider such Change of Scope. This shall also include, inter alia, suggestions for altering the location of an existing Project Site or for erecting a new Driving Test Track at a new location. Every application for Change in Scope must be accompanied by detailed reasoning as to the objectives that shall be served by such Change of Scope. The Concessing Authority shall, within 15 (fifteen) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings therefore in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.
- 16.1.3 Any works or services which are provided under and in accordance with this Article 16 shall form part of the Project and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

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

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

- (a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Automation Period, and
- (b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including a detailed breakdown by work classifications specifying the material and labour costs calculated in accordance with the schedule of rates applicable to the works assigned by the Concessioneing Authority to its contractors, along with proposed premium/ discount on such rates; provided that the cost incurred by the Concessionaire in providing such information shall be reimbursed by the Concessioneing Authority to the extent such cost is certified by the designated Officer as reasonable.

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

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

16.3 Payment for Change of Scope

16.3.1 Within 7 (seven) days of issuing a Change of Scope Order, the Concessioneing Authority shall make an advance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twenty per cent) of the cost assessed by the designated Officer. The Concessionaire shall, after commencement of work, present to the Concessioneing Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Concessioneing Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Concessioneing Authority shall disburse to the Concessionaire such amounts as are certified by the designated Officer as reasonable and after making a proportionate deduction for the advance payment made hereunder, and in the

event of any Dispute, final adjustments thereto shall be made under and in accordance with the Dispute Resolution Procedure.

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

16.4 Restriction on certain works

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

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent) of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period. This ceiling shall not apply in case any of the Driving Test Track is required to be shifted to new site. The decision to ascertain the shifting of Driving Test Tracks Centres will be solely taken up by the Concessioneing Authority based on the actual site conditions and land for such shifting shall be deemed to be part of the Site and will be provided to the Concessionaire free from all encumbrances and cost of such Land Acquisition/ license will be borne by the Concessioneing Authority.

16.5 Power of the Concessioneing Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, the Concessioneing Authority may, after giving notice to the Concessionaire

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

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in operation of the Project. The provisions of this Agreement, insofar as they relate to Automation Works, services and Tests, shall apply mutatis mutandis to the works carried out under this Clause 16.5.

16.5.3 In case any new Driving Test Tracks Centres is decided to be constructed and/or an existing Driving Test Tracks Centres is decided to be up-graded in the State of Odisha, within a period of 4 (four) years from the Appointed Date, the Concessioneing Authority shall, at its own cost, complete the entire civil construction of the Driving Test Tracks Centres, Boundary Wall, Administrative Building etc and make the same operational. Pursuant to the completion of the same, the new Driving Test Tracks Centres shall be handed over to the Concessionaire for further operation and maintenance thereof.

16.6 Reduction in Scope of the Project

16.6.1 If the Concessionaire shall have failed to complete any Automation Works on account of Force Majeure or for reasons solely attributable to the Concessioneing Authority, the Concessioneing Authority may, in its discretion, require the Concessionaire to pay 80% (eighty percent) of the sum saved therefrom, and upon such payment to the Concessioneing Authority, the obligations of the Concessionaire in respect of such works shall be deemed to have been fulfilled.

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

ARTICLE 17 OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

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

- (a) permitting safe, smooth and uninterrupted driving tests for intending applicants (Users) for issue of Driving license 2-Wheelers and 3/4 Wheelers on the Project Sites during normal operating conditions;
- (b) collecting and appropriating the User Fee from the Users of the Project Sites;
- (c) minimising disruption to intending applicants (Users) for driving license in the event of accidents or other incidents affecting the safety of intending applicant (Users) and use of the Project by providing a rapid and effective response and maintaining liaison with emergency services of the State;
- (d) carrying out periodic preventive maintenance of the Project;
- (e) undertaking routine maintenance including prompt repairs/ replacement of all Electrical works/ services and electronic equipments;
- (f) undertaking routine maintenance including prompt repairs/ replacement of all computer hardware, networking and software works etc;
- (g) provide requisite manpower for IT and other project related work and security personnel, at each of the Project Site for smoothing operation and monitoring of the Project;
- (h) conduct driving tests and hand over the test results to the intending applicants (Users) appearing for the tests after prior approval from the designated personnel of the Government, stationed at the Project Site;
- (i) transfer the test data results as per the specified formats, to the server provided by the Concessioning Authority at each RTO office. The backup of these data shall also be stored on an external storage device like DVD/ HDD. The test results shall also be entered and integrated into SARATHI database;
- (j) develop a website for providing online appointment to the intending applicant (User) for driving test. The User shall enter his/ her learning license number in the website and shall get the date and time for driving test. The website shall be compatible and integrated with SARATHI software at all RTOs. Result of the driving test shall also be uploaded on the website and can be seen by the User;
- (k) install multiple High definition cameras with inbuilt applications & CCTVs, at such locations/ angles of the Project Sites, wherein the test performances and capability of the User can be viewed clearly;

- (l) ensure that the software system installed at each Project Site has a single sign mechanism with second factor biometric authentication, wherein the approval shall be done by the designated personnel stationed at the Project Site through the use of his/ her biometric;
- (m) ensure to generate the test reports as per the requirement of the Concessioneing Authority and as has been provided by the Concessioneing Authority from time to time. However, the said reports shall include date wise list of intending applicants (Users) appeared for the Driving Tests; date wise details of the Users passed in the driving tests along with their marks; date wise details of Users failed in the driving tests along with their marks etc;
- (n) ensure to provide the internet connectivity at each Project Site and shall pay the bills on timely basis;
- (o) ensure, at all times, that the recording of the High definition cameras with inbuilt applications & CCTV camera and display can be viewed on the network and also, by the individual RTO office;
- (p) ensure to have sufficient stock of spares, at each Project Site and any default/ fault is attended/ rectified/ carried out immediately for smooth functioning of the system;
- (q) ensure to repair or replace any part required to be changed due to normal wear and tear. The frequency of inspection by the Government official shall depend on the type of equipment and recommended by the manufacturer;
- (r) ensure to have trained and appropriately skilled personnel for conducting driving tests. The Concessionaire shall be liable for all the activities of the personnel deployed by him;
- (s) ensure to abide by the provisions of the Central & State labour welfare legislations like The Minimum Wages Act, 1948; The Employees State Insurance Act, 1948; and other similar legislations, rules and orders as issued from time to time.
- (t) ensure that no malpractices/ overcharging/ harassment by any of the employees of the Concessionaire. In the event of malpractices/ overcharging/ harassment is found or reported by/ to the Concessioneing Authority, at any time during the subsistence of the Concession Period, then the Concessionaire shall be liable to take remedial measures as per the existing law of land.
- (u) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the Project Sites;
- (v) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Sites;
- (w) protection of the environment and provision of equipment and materials thereof;
- (x) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project;

17.1.2 The Concessionaire shall remove promptly from the Project all surplus construction machinery and materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project Site(s) in a clean, tidy and order condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.

17.2 Maintenance Requirements

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

17.3 Maintenance Manual

17.3.1 Not later than 180 (one hundred and eighty) days prior to the Scheduled Project Completion Date, the Concessionaire shall, in consultation with the Concessions Authority, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project in conformity with the Specification and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Concessions Authority. The Maintenance Manual shall be revised and updated once every 2 (two) years and the provisions of this Clause 17.3 shall apply, mutatis mutandis, to such revision.

17.4 Maintenance Programme

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

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

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

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

17.5 Safety and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of track closures and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones and lights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Project shall be limited to an initial response to any particular incident until such time as the competent authority takes charge and shall include prompt removal of vehicles or debris or any other obstruction, which may endanger or interrupt the smooth use of driving test tracks.

17.6 De-commissioning due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants decommissioning and closure to Users of the whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or any part of the Project to User for so long as such Emergency and the consequences thereof warrant; provided that such de-commissioning and particulars thereof shall be notified by the Concessionaire to the Concessions Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions that the Concessions Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re-commission the Project and shall notify the Concessions Authority of the same without any delay.

17.7 Track Closure

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

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause 17.6.1 or to closure of any track for a period not exceeding 4 (four) hours in a day at any time of the day.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated track for the period specified therein, and in the event of any delay in re-opening such track, the Concessionaire shall pay Damages to the Concessions Authority calculated at the rate of 0.1% (zero point one per cent) of the Performance Security, for each day of delay until the track has been reopened for traffic with a limit of maximum up to 10% of the Performance Security.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Concessions Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of the applicable Performance Security, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Concessions Authority with a limit of maximum up to 10% of the Performance Security. Recovery of such Damages shall be without prejudice to the rights of the Concessions Authority under this Agreement, including the right of Termination thereof.

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

17.8.3 **Steering Group** – A Steering Group comprising of Transport Commissioner, Odisha; Additional Commissioner Transport (Technical), 2 Divisional Transport Commissioner; and a representative of the Concessionaire shall be constituted during the O&M Period to monitor and ensure the compliance of Operation and Maintenance of the Project as per the provisions of Schedule-K. The Steering Group shall meet once in every six (6) months or earlier and will ensure the compliance of the Operation and Maintenance of the Project in accordance with the provisions of this Agreement thereof. For the avoidance of doubt, it is clarified that for the repair and/ or deficiencies of services mentioned in Schedule-K for which financial damages provisions have been clearly detailed out, the Steering Group shall be entitled to impose damages accordingly which shall be recovered by the Concessions Authority. For the services, for which damages provisions are not detailed out or cannot be computed in financial terms in Schedule-K, provisions of Clause 17.8.1 of this Agreement shall apply.

17.9 Government's right to take remedial measures

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

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

17.10 Overriding powers of the Concessions Authority

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

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

Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Concessions Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Concessions Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Concessions Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Concessions Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Concessions Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to Project

Save and except as otherwise expressly provided in this Agreement, in the event that the Project or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project conforms to the provisions of this Agreement.

17.12 Modifications to the Project

The Concessionaire shall not carry out any material modifications to the Project save and except where such modifications are necessary for the Project to operate in conformity with the Specification and Standards, Maintenance Requirements and Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Concessions Authority of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the Concessions Authority may make within 15 (fifteen) days of receiving the Concessionaire's proposal. For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

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

- (a) an event of Force Majeure;

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

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project open to traffic provided they can be operated safely.

17.14 Barriers

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

17.15 Advertising on the Site

Subject to Applicable Laws, as in force and effect from time to time, the Concessionaire may undertake any form of commercial advertising, display or hoarding at any place on the Project Site(s) if the advertising does not, in the opinion of the Concessioneing Authority, distract the Users or violates any Court orders and the guidelines of Government of Odisha.

ARTICLE 18
SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project, and shall comply with the safety requirement.

ARTICLE 19
MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

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

19.2 Inspection

The designated Officer of Concessions Authority shall inspect the Project Sites, at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Concessions Authority and the Concessionaire within 7 (seven) days of such inspection.

19.3 Tests

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

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Concessions Authority and the Concessions Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Concessions Authority shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial

measures have brought the Project into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project conforms to the Maintenance Requirements. In the event that remedial measures are not completed by the Concessionaire in conformity with the provisions of this Agreement, the Concessioneing Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Concessioneing Authority, within 7 (seven) days of completion of each month, a statement of User Fee substantially in the form set forth in Schedule-M (the "**Monthly Fee Statement**"). The Concessionaire shall also furnish to the Government such other information as the Government may reasonably require, at specified intervals, in discharge of its statutory functions.

19.6 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each week, send to the Concessioneing Authority, by facsimile or e-mail, a report stating unusual occurrence on the Project Sites relating to the functioning of the Project. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Project Site(s) shall include:

- (a) disablement of any equipment during operation;
- (b) damaged or dislodged of any equipment;
- (c) any obstruction on the Project sites, which results in slow down of the services being provided by the Concessionaire;
- (d) communication failure affecting the operation of Project site(s);
- (e) smoke or fire at Project site(s);
- (f) flooding of Project site(s); and
- (g) such other relevant information as may be required by the Concessioneing Authority.

ARTICLE 20 TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate driving tests by the intending applicants (Users) on the Project Site(s) in accordance with the Applicable Laws, and subject to the supervision and control of the State authorities or a substitute thereof empowered in this behalf under the Applicable Laws.

20.2 Police assistance

For regulating the use of Project Site(s) in accordance with the Applicable Laws and this Agreement, the Concessioneing Authority shall assist the Concessionaire in procuring police assistance from the State Police Department as and when requisitioned by the Concessionaire. For the avoidance of doubt, this shall not include the period when Police shall be deployed by the State authorities to deal with emergency, regulating unusual crowd of intending applicants for driving license on Project site(s) and/ or law and order situation otherwise.

20.3 Expenditure on Police assistance

The Concessionaire shall reimburse the expenditure of State Police Department as and when requisitioned by it to assist the Concessionaire in meeting with its obligations under the Agreement. The payment shall be made within 15 (fifteen) days of receipt of details in this regard from Police Department. In the event of any Dispute relating to the expenditure incurred by the Police Department, the Dispute Resolution Procedure shall apply.

**ARTICLE 21
MEDICAL FIRST AID**

21.1 Medical First Aid

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall keep the First Aid Kit and operate it at each of the Project Site. The Concessionaire shall install a system for making instant calls to 108 (toll free telephone number) for emergency services and coordinate until unless the Ambulance Services has reached the exact location/ accident site, for victims of accidents, on the Project Sites.

ARTICLE 22
DESIGNATED OFFICER/ ENGINEER

22.1 Appointment of Designated Officer/ Engineer

The Concessions Authority shall depute/ appoint a designated Officer/ Engineer under this Agreement (the “**designated Officer/ Engineer**”) at no expense to the Concessionaire.

22.2 Duties and functions

22.2.1 The designated Officer/ Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth.

22.2.2 The designated Officer/ Engineer shall submit regular periodic reports (at least once every month) to the Concessions Authority in respect of its duties and functions set forth.

22.3 Assistance to the designated Officer/ Engineer

The designated Officer/ Engineer shall be assisted by technical staff as may be provided by the Concessions Authority from time to time.

22.4 Termination of appointment

22.4.1 The Concessions Authority shall endeavour that designated Officer/ Engineer as appointed shall continue for as long period as possible but may, in its discretion, appoint another designated Officer/ Engineer in any unavoidable circumstances.

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

Part IV

Financial Covenants

ARTICLE 23 FINANCIAL CLOSE

23.1 Financial Close

23.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 90 (ninety) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period of 60 (sixty) days, subject to payment of Damages to the Concessions Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay with a limit of maximum up to 10% of the Performance Security, provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 90 (ninety) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any default or delay by the Government in procuring satisfaction of the Conditions Precedent specified in Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.

23.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Concessions Authority forthwith, and shall have provided to the Concessions Authority, at least 2 (two) days prior to the Financial Close, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

23.2 Termination due to failure to achieve Financial Close

23.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 23.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 23.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Close, the provisions of this Clause 23.2.1 shall not apply.

23.2.2 Upon Termination under Clause 23.2.1, the Concessions Authority shall be entitled to encash the Bid Security and appropriate the proceeds thereof as Damages; provided, however, if Financial Close has not occurred solely as a result of the Government being in default of any of its obligations under Clause

4.1.2, it shall, upon Termination, return the Bid Security forthwith along with Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Government shall be entitled to encash therefrom an amount equal to Bid Security.

ARTICLE 24 USER FEES

24.1 Collection and appropriation of User Fees

24.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate User Fees from the Users in accordance with this Agreement and rates and provisions set forth in Schedule-R.

24.1.2 That Concessionaire acknowledges and agrees that upon payment of User Fees, any User shall be entitled to give Driving Tests at the Project Site and the Concessionaire shall not place, or caused to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

24.2 Revision of Concessionaire's Share in User Fee

24.2.1 The Parties hereto acknowledge and agree that the Concessionaire's Share in User Fees, as provided in Schedule-R, are as on 1st April 2015 and shall be revised annually subject to and in accordance with the provisions set forth in Schedule-R.

24.2.2 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Concessionaire's Share in User Fee or other relief from the Concessioning Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement.

24.2.3 The Concessionaire's Share in User Fee shall be increased at the rate of 5% every year over the previous share and is exclusive of Service Tax. Before effecting such increase the concessionaire shall inform the Concessioning Authority 15 days in advance and accordingly display the increased User Fee at each of the test locations.

24.3 Display of User Fee rates

24.3.1 The Concessionaire shall, at each project Site, prominently display the applicable rates of User Fee, to be charged from Users for the driving tests for 2-Wheelers and 3/4 Wheelers, in English and Odiya for information of Users and shall also publish and display such other information in such manner as may be prescribed under the Concession Agreement.

24.3.2 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of User Fee payable under the Concession Agreement. In the event any excess amounts are collected by or on behalf of the Concessionaire, it shall, upon receiving a notice to this effect from the Concessions Authority, refund such excess amounts to the Concessions Authority.

24.4 Appropriation of User Fee

24.4.1 The User Fee, being collected by the Concessionaire, if a sum of Government Fee (may be charged as per the Motor Vehicle Act) and Concessionaire's Share in User Fee.

24.4.2 The Concessionaire shall ensure that, before issuance of receipt of payment to the User, the relevant amount of User Fee is first credited to the account of the Concessions Authority in respect of the Government Fee, and in the last, to its own account in respect of Concessionaire share of User's Fee. All the transactions shall be done through the online payment mechanism developed by the Concessionaire and accepted by the Concessions Authority.

ARTICLE 25
CONSTRUCTION OF NEW DRIVING TEST TRACKS CENTRES AT NEW LOCATION

25.1 Construction of Additional Driving Test Tracks Centres at New Location

25.1.1 If the Concessioneing Authority, within a period of 4 (four) years from the Appointed Date, is able to arrange additional land at any other place within the State of Odisha for creating new Driving Test Tracks Centres for 2-Wheeler and 3/4 Wheelers, then the Concessioneing Authority shall develop the entire civil infrastructure including the Administrative Building and thereby, transfer the same to the Concessioneaire. Concessioneaire shall then have to perform the works stipulated under paragraph 2.2.2, 2.2.3, 2.2.4 and 2.2.5 of Schedule-B for such additional Driving Test Tracks Centres constructed at any new location. However, it is to be noted here that the Concessioneing Authority, at no time, shall develop more than 45 (forty) Driving Test Tracks Centres of 2-Wheeler and 3/4 Wheelers within the State of Odisha.

25.2 Modification in the Concession Period

There shall be no modification in the Concession Period, subject to increase in the number of Driving Test Tracks Centres.

25.3 Change in Concessioneaire's Share of User Fee due to Additional Driving Test Tracks Centres

25.3.1 On successful completion of the additional Driving Test Tracks Centres as per Clause 25.1.1, the Concessioneaire shall have the right to collect and appropriate User Fee at the additional Driving Test Tracks Centres in accordance with the provisions of Article 24. For each additional driving test tracks centre developed in accordance with Clause 25.1.1, the Concessioneaire's Share in User Fee shall be determined as per the following guidelines:

If the additional Driving Test Tracks Centres are developed for 2-Wheelers and 3/4 Wheelers, then the Concessioneaire's Share in User Fee shall be increased by 3% of the prevailing Concessioneaire's Share of User Fee for conducting of driving test for 2-Wheelers and/or 3/4 Wheelers. Such increase shall be for each of the additional Driving Test Track developed for 2-Wheelers and 3/4 Wheelers. For the avoidance of doubt, if the Concessioneaire's share of User Fee for conducting Driving Test for 2-Wheeler is Rs 100 and Government decides to develop 2 (two) additional Driving Test Tracks Centres for 2-Wheeler, then the Concessioneaire's share of User Fee for conducting driving test for 2-Wheeler will be increased by 6% (i.e. 2*3%).

ARTICLE 26 INSURANCE

26.1 Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction/ Automation Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice the “**Insurance Cover**”). The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Concessioneing Authority as a consequence of any act or omission of the Concessionaire during the Construction/ Automation Period. The Concessionaire shall procure that in each insurance policy, the Concessioneing Authority shall be a coinsured and that the insurer shall pay the proceeds of insurance to the insurance company and provide a photocopy of the receipt to the Concessioneing Authority. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

26.2 Notice to the Concessioneing Authority

Not later than 45 (forty five) days prior to commencement of the Construction/ Automation Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Concessioneing Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 26. Within 30 (thirty) days of receipt of such notice, the Concessioneing Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

26.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 26 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Concessioneing Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Concessioneing Authority.

26.4 Remedy for failure to insure

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

26.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 26 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Concessioneing Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

26.6 Concessionaire's waiver

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

26.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall, notwithstanding anything to the contrary contained in Clause 26.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

ARTICLE 27 ACCOUNTS AND AUDIT

27.1 Audited accounts

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

27.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Concessioneing Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.

27.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Concessioneing Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarized information on

- (a) the traffic count for each category of vehicles using the Project and liable for payment of Processing Charges thereof,
- (b) Processing Charges charged and received and other revenues derived from the Project, and (c) such other information as the Concessioneing Authority may reasonably require.

27.2 Appointment of auditors

27.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the

criteria set forth. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

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

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

27.3 Certification of claims by Statutory Auditors

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

27.4 Dispute resolution

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

Part V

Force Majeure and Termination

ARTICLE 28 FORCE MAJEURE

28.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 28.2, 28.3 and 28.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event

- (i) is beyond the reasonable control of the Affected Party, and
- (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and
- (iii) has Material Adverse Effect on the Affected Party.

28.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionizing radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/ representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than
 - (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or
 - (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or
 - (iii) enforcement of this Agreement, or
 - (iv) exercise of any of its rights under this Agreement by the Government;

- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

28.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any civil commotion, boycott or political agitation which prevents collection of Processing Charges by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

28.4 Political Event

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

Government Instrumentality:

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 36 and its effect, in financial terms, exceeds the sum specified in Clause 36.1;
- (b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

28.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 28 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

28.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

28.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 28.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

28.6 Effect of Force Majeure Event on the Concession

28.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.4.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

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

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to collect User Fee despite making best efforts or it is directed by the Concessioneing Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of User Fee on account thereof.

28.7 Allocation of costs arising out of Force Majeure

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

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

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Government to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Concessioneing Authority to the Concessionaire.

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

28.7.3 Save and except as expressly provided in this Article 28, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

28.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 28, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

28.9 Termination Payment for Force Majeure Event

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

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

- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
- (b) 100% (one hundred per cent) of the Adjusted Equity.

28.9.3 If Termination is on account of a Political Event, the Concessing Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 31.3.2 as if it were a Government Default.

28.10 Dispute resolution

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

28.11 Excuse from performance of obligations

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

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

ARTICLE 29 COMPENSATION FOR BREACH OF AGREEMENT

29.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 29.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Concessioneing Authority by way of compensation, all direct costs suffered or incurred by the Concessioneing Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 29.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Concessioneing Authority.

29.2 Compensation for default by the Concessioneing Authority

Subject to the provisions of Clause 29.1, in the event of the Concessioneing Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses, any increase in capital costs on account of inflation and all other costs directly attributable to such material breach or default but shall not include loss of Concessionaire's share of User Fee revenues, debt repayment obligations or other consequential losses, and for determining such compensation, information contained in the Financial Package and the Financial Model may be relied upon to the extent it is relevant.

29.3 Extension of Concession Period

Subject to the provisions of Clause 29.1, in the event that a material default or breach of this Agreement set forth in Clause 29.2 causes delay in achieving COD or leads to suspension of or reduction in collection of Concessionaire's share of User Fees, the Concessioneing Authority shall, in addition to payment of compensation under Clause 29.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed or the collection of User Fee remained suspended on account thereof, as the case may be. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Concessionaire's share of User Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

29.4 Compensation to be in addition

Compensation payable under this Article 29 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

29.5 Mitigation of costs and damage

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

ARTICLE 30
SUSPENSION OF CONCESSIONAIRE'S RIGHTS

30.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Concessions Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to

- (i) suspend all rights of the Concessionaire under this Agreement including the Concessionaire's right to collect User Fee, and other revenues pursuant hereto, and
- (ii) exercise such rights itself and perform the obligation hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the Concessions Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders' Representative, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

30.2 Concessions Authority to act on behalf of Concessionaire

30.2.1 During the period of Suspension, the Concessions Authority shall, on behalf of the Concessionaire, collect all User Fee in accordance with this Agreement.

30.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest in the Concessionaire therein and all things done or actions taken, including expenditure incurred by the Concessions Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Concessions Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Concessions Authority or any other person authorised by it under Clause 30.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project and its design, engineering, automation, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

30.3 Revocation of Suspension

30.3.1 In the event that the Concessions Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights

of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Concessioneing Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

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

30.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders' Representative, the Concessioneing Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 30.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

30.5 Termination

30.5.1 At any time during the period of Suspension under this Article 30, the Concessionaire may by notice require the Concessioneing Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 30.4, the Concessioneing Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 31.

30.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 30.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, mutatis mutandis, to such Termination as if a Termination Notice had been issued by the Concessioneing Authority upon occurrence of a Concessionaire Default.

ARTICLE 31 TERMINATION

31.1 Termination for Concessionaire Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-G and continues to be in default for 120 (One hundred and Twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the automation or operation of the Project at any of the Project Site(s) without the prior written consent of the Concessioneing Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.4.3;
- (f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;
- (g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (h) the Concessionaire has failed to make any payment to the Concessioneing Authority within the period specified in this Agreement;
- (i) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Concessioneing Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (j) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (k) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (l) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (m) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (n) there is a transfer, pursuant to law either of

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

31.1.2 Without prejudice to any other rights or remedies which the Concessioneing Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Concessioneing Authority shall be entitled to terminate this Agreement

by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Concessions Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 31.1.3.

31.1.3 The Concessions Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 31.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Concessions Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Concessions Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Concessions Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Concessions Authority may deem appropriate.

31.2 Termination for Concessions Authority Default

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

- (a) the Concessions Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire;
- (b) the Concessions Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement; or

- (c) the Concessing Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement.

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

31.3 Termination Payment

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

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

- (a) Debt Due; and
- (b) 100% (one hundred per cent) of the Adjusted Equity.

31.3.3 Termination Payment shall become due and payable to the Concessionaire within 15 (fifteen) days of a demand being made by the Concessionaire to the Concessing Authority with the necessary particulars, and in the event of any delay, the Concessing Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Concessing Authority of its payment obligations in respect thereof hereunder.

31.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 31 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not

have any further right or claim under any law, treaty, convention, contract or otherwise.

31.4 Other rights and obligations of the Government

Upon Termination for any reason whatsoever, the Concessioneing Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment, IT infrastructure including hardware and software on or about the Project Sites;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Project Sites or any part of the Project Sites;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 32.1; and
- (e) succeed upon election by the Concessioneing Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Concessioneing Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Concessioneing Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Concessioneing Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Concessioneing Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Concessioneing Authority for this purpose shall be deducted from the Termination Payment.

31.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 31.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

ARTICLE 32
DIVESTMENT OF RIGHTS AND INTEREST

32.1 Divestment Requirements

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

- (a) notify to the Concessioneing Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project including Project sites, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including the approaches, pavements, structures, services and equipments, IT infrastructure including hardware and software of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, equipment, IT infrastructure including hardware and software, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, operation and maintenance of the Project and shall be assigned to the Concessioneing Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Concessioneing Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project and Project Sites, including manufacturers' warranties in respect of any services, plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Concessioneing Authority, absolutely unto the Concessioneing Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Concessioneing Authority or to its nominee.

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

32.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Concessions Authority shall verify, after giving due notice to the Concessionaire specifying the time, date and venue of such verification and/or inspection, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 33 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 32.

32.3 Cooperation and assistance on transfer of Project

32.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Parties.

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

32.4 Vesting Certificate

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Concessions Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth, which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Concessions Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Concessions Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

32.5 Divestment costs etc.

32.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Concessions Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Concessions Authority.

32.5.2 In the event of any dispute relating to matters covered by and under this Article 32, the Dispute Resolution Procedure shall apply.

ARTICLE 33 DEFECTS LIABILITY AFTER TERMINATION

33.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Concessions Authority in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Concessions Authority in this behalf, the Concessions Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Concessions Authority hereunder shall be reimbursed by the Concessionaire to the Concessions Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Concessions Authority shall be entitled to recover the same from the Performance Security.

Part VI

Other Provisions

ARTICLE 34 ASSIGNMENT AND CHARGES

34.1 Restrictions on assignment and charges

34.1.1 Subject to Clauses 34.2 and 34.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Concessioneing Authority, which consent the Concessioneing Authority shall be entitled to decline without assigning any reason.

34.1.2 Subject to the provisions of Clause 34.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Concessioneing Authority, which consent the Government shall be entitled to decline without assigning any reason.

34.2 Permitted assignment and charges

The restraints set forth in Clause 34.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/ pledges/ hypothecation of goods/ assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/ or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

34.3 Substitution Agreement

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

34.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the

Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Concessions Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

34.4 Assignment by the Concessions Authority

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

ARTICLE 35 CHANGE IN LAW

35.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after-tax return or other financial burden, the aggregate financial effect of which exceeds the higher of Rs. 50 Lakh (Rupees Fifty Lakh) and 0.5% (zero point five percent) of the Concessionaire's Share in User Fee in any Accounting Year, the Concessionaire may so notify the Concessions Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the cost increase, reduction in return or other financial burden as aforesaid. Upon notice by the Concessionaire, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Concessions Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessions Authority shall pay the amount specified therein; provided that if the Concessions Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs or increase in net after-tax return or other financial gains, the aggregate financial effect of which exceeds the higher of Rs. 50 Lakh (Rupees Fifty Lakh) and 0.5% (zero point five percent) of the Concessionaire's Share in User Fee in any Accounting Year, the Concessions Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in the decreased costs, increase in return or other financial gains as aforesaid. Upon notice by the Concessions Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessions Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of

receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified therein to the Concessioneing Authority; provided that if the Concessionaire shall dispute such claim of the Concessioneing Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 35.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

35.3 Protection of NPV

Pursuant to the provisions of Clauses 35.1 and 35.2 and for the purposes of placing the Concessionaire in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial Model to establish a net present value (the "**NPV**") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

35.4 Restriction on cash compensation

The Parties acknowledge and agree that the demand for cash compensation under this Article 35 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than 2 (two) years from the close of such Accounting Year.

35.5 No claim in the event of recovery from Users

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

ARTICLE 36
LIABILITY AND INDEMNITY

36.1 General indemnity

36.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Concessioneing Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/ or controlled entities/ enterprises, (the "**Government Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach of this Agreement on the part of the Concessioneing Authority Indemnified Persons.

36.1.2 The Concessioneing Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of

- (i) defect in title and/ or the rights of the Concessioneing Authority in the land comprised in the Project Sites, and/ or
- (ii) breach by the Concessioneing Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/ or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/ or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

36.2 Indemnity by the Concessionaire

36.2.1 Without limiting the generality of Clause 36.1, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority and the Concessioneing Authority Indemnified Persons from and against any and all loss and/ or damages arising out of or with respect to:

- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
- (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

- (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

36.2.2 Without limiting the generality of the provisions of this Article 36, the Concessionaire shall fully indemnify, hold harmless and defend the Concessioneing Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Concessioneing Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Concessioneing Authority a licence, at no cost to the Concessioneing Authority, authorizing continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

36.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 36 (the "**Indemnified Party**") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

36.4 Defence of claims

36.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and

reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 36, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

36.4.2 If the Indemnifying Party has exercised its rights under Clause 36.3, 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).

36.4.3 If the Indemnifying Party exercises its rights under Clause 36.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

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

Provided that if Sub-clauses (b), (c) or (d) of this Clause 36.4.3 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.

36.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 36, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

36.6 Survival on Termination

The provisions of this Article 36 shall survive Termination.

ARTICLE 37
RIGHTS AND TITLE OVER THE PROJECT SITES

37.1 Licensee rights

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

37.2 Access rights of the Government and others

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

37.3 Property taxes

All property taxes on the Project Sites shall be payable by the Concessioneing Authority as owner of the Site.

37.4 Restriction on sub-letting

The Concessionaire shall not sub-license or sub-let the whole or any part of the Project Sites, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

37.5 Restriction on Franchise

Then Concessionaire shall not franchise the whole or any part of the Project sites, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

ARTICLE 38 DISPUTE RESOLUTION

38.1 Amicable Resolution

38.1.1 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 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 Clause 38.1.2 provided further that the Party claiming dispute resolution shall issue a notice in writing of at least thirty (30) days to the other Party informing it of its intention of initiating dispute resolution procedure.

38.1.2 In the event of any Dispute between the Parties, such Dispute shall be referred to the Transport Commissioner, GoO and the Chairman of the Board or Directors of the Concessionaire, for amicable settlement. Upon such reference, the said two individuals shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said two individuals, either Party may refer the dispute to arbitration in accordance with the provisions of Clause 38.2.

38.1.3 If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Clause 38.2 shall apply.

38.2 Arbitration

38.2.1 Any Dispute, which is not resolved amicably as provided in Clause 38.1 shall be finally decided by reference to arbitration by a one man Arbitrator, appointed pursuant to Clause 38.2.2 below. Such arbitration shall be held in accordance with the Rules of Arbitration of the Indian Council of Arbitration and shall be subject to the provisions of the Indian Arbitration and Conciliation Act, 1996 and any amendments thereto.

38.2.2 There shall be a one man arbitrator who shall be nominated by Concessions Authority.

38.2.3 The arbitrator shall issue a reasoned Award.

38.2.4 The venue of such arbitration shall be Bhubaneswar, India.

38.2.5 The Concessionaire and Concessions Authority undertake to carry out any decision or award of the arbitrator (the “**Award**”) without delay. Awards relating to

any Dispute shall be final and binding on the Parties as from the date they are made.

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

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

38.3 Performance during Dispute

Performance of this Concession Agreement shall continue during the settlement of any Dispute under this Article 38. The provision of this dispute settlement shall be binding upon the successors; assigns and any trustee or receive of either the Concessioneing Authority or the Concessionaire.

ARTICLE 39 DISCLOSURE

39.1 Disclosure of Specified Documents

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

39.2 Disclosure of Documents relating to safety

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

39.3 Notwithstanding the provisions of Clauses 39.1 and 39.2, the Concessions Authority shall be entitled to direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined herein below) to any person in pursuance of the aforesaid Clauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 39.1 and 39.2, or portions thereof, the disclosure of which the Concessions Authority is entitled to withhold under the provisions of the Right to Information Act, 2005.

ARTICLE 40
REDRESSAL OF PUBLIC GRIEVANCES

40.1 Complaints Register

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

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

40.1.3 Without prejudice to the provisions of Clauses 40.1.1 and 40.1.2, the Concessioneing Authority may, in consultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

40.2 Redressal of complaints

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

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

ARTICLE 41 MISCELLANEOUS

41.1 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 Odisha shall have jurisdiction over matters arising out of or relating to this Agreement.

41.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

41.3 Depreciation and interest

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

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

41.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if no such period is specified, within 30 (thirty) days of receiving a demand along with the

necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 5% (five per cent) above the Bank Rate, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

41.5 Waiver

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

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

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

41.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Concessioneing Authority or the designated Officer/ Engineer of any Project Agreement, Document, Proposal or Drawing submitted by the Concessionaire nor any observation or inspection of the automation/ construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Concessioneing Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

41.7 Exclusion of implied warranties etc.

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

41.8 Survival

41.8.1 Termination shall:

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

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

41.9 Entire Agreement

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

41.10 Severability

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

41.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to

enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

41.12 Third Parties

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

41.13 Successors and Assigns

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

41.14 Notices

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

- (a) in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Concessioneing Authority; provided that notices or other communications to be given to an address outside Odisha may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Concessioneing Authority;
- (b) in the case of the Concessioneing Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Transport Commissioner – cum – Chairman, State Transport Authority, Odisha or such other person as the Concessioneing Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Odisha it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery; provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

41.15 Language

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

41.16 Counterparts

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

ARTICLE 42 DEFINITIONS

42.1 Definitions

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

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

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

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **"Base Adjusted Equity"**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.83% (zero point eight three per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date;

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

"Affected Party" shall have the meaning set forth in Clause 28.1;

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

"Appendix" shall have meaning set forth in Clause 11.3.1;

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

"Applicable Permits" means all clearances, licences, permits, authorizations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the up-gradation, construction, implementation, operation and maintenance of the Project during the subsistence of this Agreement;

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

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

"Automated Driving Test Tracks Centres" means any single Project Site included in the list given in Schedule-B and constructed/ upgraded as per the specifications and standards given in Schedule-D;

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

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

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

"Bid Security" means the security provided by the Concessionaire to the Concessions Authority along with the Bid in a sum of Rs. 25 lakh (Rupees twenty five lakh), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"COD" or **"Commercial Operation Date"** shall have the meaning set forth in Clause 15.1;

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

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

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes the aggregate holding of the {selected bidder together with {its} Associates, in the total Equity to decline below (i) 51% (fifty one per cent) thereof during Construction Period, (ii) 33% (thirty three per cent) thereof during a period of 3 (three) years following COD, and (iii) 26% (twenty six per cent) thereof, or such lower proportion as may be permitted by the Concessioneing Authority during the remaining Concession Period; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding process for the purposes of meeting the minimum conditions of eligibility or for evaluation of its Bid, as the case may be,) in the proportion of the equity holding of {the selected bidder} to the total Equity, if it occurs prior to COD, shall constitute Change in Ownership;

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

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

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

"Concession" shall have the meaning set forth in Clause 3.1.1;

"Concessionaire" shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

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

"Concessionaire Default" shall have the meaning set forth in Clause 31.1.1;

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

"Concessionaire Share in User Fee" means the share of Concessionaire in the User Fee, for enabling him/ her to conduct the driving tests, recovery of investment in

development and construction and operate and maintain the Project, in accordance with the terms and conditions of this Agreement;

"Automation/ Construction Period" means the period beginning from the Site Handover Date and ending on COD;

"Automation/ Construction Works" means all works, services and things necessary to complete the Project in accordance with this Agreement;

"Contractor" means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, the Tolling Contract or any other material agreement or contract for construction, operation and/ or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

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

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Concessioneing Authority or the designated Officer/ Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Concessioneing Authority or the designated Officer/ Engineer to accord their approval;

"BOOT" or **"Build, Own, Operate and Transfer"** shall have the meaning set forth;

"Damages" shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

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

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the **"principal"**) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment

charges in relation to accelerated repayment of debt except where such charges have arisen due to Government Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

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

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

"Development Period" means the period from the date of this Agreement until the Site Handover Date;

"Dispute" shall have the meaning set forth in Clause 38.1.1;

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

"Divestment Requirements" means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 32.1;

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

"Drawings" means all of the drawings, calculations and documents pertaining to the Project and Project Sites as set forth in Schedule-H , and shall include 'as built' drawings of the Project and Project Sites;

"EPC Contract" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

"EPC Contractor" means the person with whom the Concessionaire has entered into an EPC Contract;

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Project or any Project Sites, including Users thereof, or which poses an immediate threat of material damage to any of the Project Assets;

"Encumbrances" means, in relation to the Project or Project Sites, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment,

privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.2;

"Equity" means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and for the purposes of this Agreement shall include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

"Financial Close" means the fulfillment of all conditions precedent to the initial availability of funds under the Financing Agreements;

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

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

"Financial Package" means the financing package indicating the total capital cost of Up-gradation, development, automation, equipment, software development, IT infrastructure including hardware and software, services and implementation of Driving Test Tracks Centres and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements and Subordinated Debt, if any;

"Financing Agreements" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to nonconvertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 28.1;

"GOI" means the Government of India;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be

expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"Government" means the Government of the State of Odisha;

"Government Default" shall have the meaning set forth in Clause 31.2.1;

"Government Instrumentality" means any department, division or sub-division of the Government of India or the Government of Odisha and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government of India or the Government of Odisha, as the case may be, and having jurisdiction over all or any part of the Project or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"Government Representative" means such person or persons as may be authorised in writing by the Government 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 the Government under this Agreement;

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 36;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 36;

"Designated Officer/Engineer" shall have the meaning set forth in Clause 22.1;

"Indirect Political Event" shall have the meaning set forth in Clause 28.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 26, and include all insurances required to be taken out by the Concessionaire under Clause 26.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

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

"3/4 Wheeler" means any mechanical vehicle the Gross Vehicle Weight of which does not exceed seven thousand five hundred kilograms or the registered passenger carrying capability as specified in the certificate of registration issued under the Motor Vehicles Act, 1988 (Central Act No. 59 of 1988) does not exceed twelve passengers, excluding the driver but does not include a motor cycle, tractor or Road Roller;

"LOA" or **"Letter of Award"** means the letter of award referred to;

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

"Licenses" means both new licenses, as being applied by the User/ Applicant for 2-Wheeler and/ or 3/4 Wheeler;

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

"Maintenance Programme" shall have the meaning ascribed to it in Clause 17.4;

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

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

"Medical First Aid" shall have the meaning set forth in clause 21.1;

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

"Non-Political Event" shall have the meaning set forth in Clause 28.2;

"O&M" means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of User Fee in accordance with the provisions of this Agreement;

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

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

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

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

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

"Panel of Chartered Accountants" shall have the meaning set forth in Clause 27.2;

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

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

"Political Event" shall have the meaning set forth in Clause 28.4;

"User Fee" means the fee to be levied on and payable by the User for enabling him/ her for conducting the Driving Test for a vehicle using the Project or a part thereof, in accordance with terms and conditions of this Agreement;

"Project" means the design, development, automation, equipment, software development, IT infrastructure including hardware and software, services, operation and maintenance of the total 38 (thirty eight) Driving Test Tracks Centres Centre for 2-Wheelers and 3/4 Wheelers as detailed out in Schedule-B, in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

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

"Project Assets" means all physical and other assets relating to and forming part of the Project and Project Sites including (a) rights over the Site in the form of licence, Right of Way or otherwise; (b) tangible assets such as civil works and equipment including foundations, pavements, road surface, sign boards, services, electrical systems,

communication systems, and administrative offices; (c) software development, IT infrastructure including hardware and software; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project, but does not include Additional Facilities;

"Project Completion Date" means the date on which the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 12;

"Project Completion Schedule" means the progressive Project Milestones set forth in Schedule-G for completion of the Project on or before the Scheduled Project Completion Date;

"Project Milestones" means the project milestones set forth;

"Provisional Certificate" shall have the meaning set forth in Clause 14.3;

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

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

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

"Request for Proposals" or "RFP" shall have the meaning set forth;

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

"Safety Requirements" shall have the meaning set forth in Clause 18.1.1;

"Scheduled Project Completion Date" shall have the meaning set forth in Clause 12.4.1;

"Scope of the Project" shall have the meaning set forth in Clause 2.1;

"Senior Lenders" means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire

under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold paripassu charge on the assets, rights, title and interests of the Concessionaire;

"**Site**" shall have the meaning set forth in Clause 11.1;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Concessioneing Authority;

"**State**" means the State of Odisha and "State Government" means the Government of that State;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 27.2.1;

"**Steering Group**" shall have the meaning set forth in Clause 17.8.3;

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

- (a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate;

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

"**Substitution Agreement**" shall have the meaning set forth in Clause 34.3;

"**Suspension**" shall have the meaning set forth in Clause 30.1;

"**Taxes**" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess, labourcess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in

relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Termination" means the expiry or termination of this Agreement and the Concession hereunder;

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

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

"Tests" means the tests set forth in Schedule-I to determine the completion of up-gradation/ development of Project in accordance with the provisions of this Agreement;

"Total Project Cost" means the lowest of:

- (a) the capital cost of the Project, as set forth in the Financial Package;
- (b) the capital cost certified by the designated Officer/ Engineer; and
- (c) the actual capital cost of the Project upon completion of Project;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in WPI occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement.

"Transfer Date" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"User" means a person who uses the Project or any part thereof in/ on any vehicle or otherwise;

"Vesting Certificate" shall have the meaning set forth in Clause 32.4; and

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

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

SIGNED SEALED AND DELIVERED

for and on behalf of

State Transport Authority, Odisha (Concessions Authority) by:

_____ (Signature)

_____ (Name)
_____ (Designation)

SIGNED SEALED AND DELIVERED

for and on behalf of

_____ (Concessionaire) by:

_____ (Signature)

_____ (Name)
_____ (Designation)

In the presence of

1. _____ (Signature)

_____ (Name)
_____ (Designation)

2. _____ (Signature)

_____ (Name)
_____ (Designation)