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CONCESSION AGREEMENT

This Agreement is executed on this the ____ day of _____(Month), Two Thousand and Ten at New Delhi

BY AND BETWEEN

The Delhi Metro Rail Corporation Limited, a joint venture of the Government of India and the Government of the National Capital Territory of Delhi, having its registered office at Metro Bhawan, 13, Fire Brigade lane, Barakhamba Road,, New Delhi 110001 (hereinafter referred to as “DMRC” which expression shall unless repugnant to the context include its successors and assigns) of the One Part ,

AND

M/s _____Ltd.¹, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____ (hereinafter referred to as the “Concessionaire” which expression shall unless repugnant to the context include the successors and permitted assigns) of the Other Part

OR

Messrs _____Ltd.², a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; Messrs _____Ltd., a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; and Messrs _____Ltd., and a company incorporated under the provisions of the Companies Act, 1956, having its registered office at _____; who form a consortium for the purposes of this Agreement and Project to be implemented under this Agreement (hereinafter collectively referred to as the “Concessionaire” which expression shall unless repugnant to the context include their respective successors and permitted assigns including any Special Purpose Company that may be permitted by DMRC to be established as detailed in this Agreement) of the Other Part

WHEREAS:

A. DMRC has been established with the principal object of planning, designing, developing, constructing, maintaining operating and financing Mass Transit and other urban transport and people mover system of all types and descriptions in the

¹ In case of a single company

² In case of a Consortium include the names and addresses of the Consortium members. A Special Purpose Company (SPC) may be allowed subsequent to the signing of the agreement but the SPC need not be a party to sign the Agreement. SPC can be permitted only by way of convenience to the consortium members, without in any way affecting the obligations and responsibilities of the consortium members. For the functional aspects SPC will become the operating company of the Project. DMRC will recognise only the consortium/individual as tenderer, which will be jointly and severally responsible for fulfilling all the obligation under the agreement. DMRC is not liable to enter into any separate agreement with SPC.

- National Capital Territory of Delhi and other areas of the National Capital region (hereinafter called the '**territory**');
- B. The Delhi Metro Railway (Operation and Maintenance) Act, 2002 has been enacted by the Parliament to provide for the operation and maintenance, and to regulate the metro railway in the metropolitan city of Delhi and for matters connected therewith and incidental thereto;
- C. Considering the public utility services rendered by DMRC and with the aim of subsidising the charges for the passengers and promoting the use of the Metro Rail, DMRC has been authorised to develop real estates and other commercial facilities in the Metro Stations and other places in the Territory and generate revenues there from;
- D. In pursuance of the above DMRC decided to undertake, the Multi level parking with Commercial development at (**Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar**) whose area is more fully described and delineated in the plan attached hereto as Schedule A (the said ----- Sq.m approx is hereinafter referred to as the '**Specified Area**').
- E. DMRC proposed to grant to a selected person a Concession to design, develop, procure, finance, construct, manage, maintain the integrated parking complex and license the use of the built up spaces & facilities in the Specified Area for specified purposes (hereinafter called the '**Project**') for the period of 30 years. DMRC proposes to develop a "**Multi level parking with Commercial development**" at _____ in the 'Specified Area', hereinafter referred to as the **Project Facility**.
- F. DMRC invited proposals for selection of Concessionaire for the Project on a competitive basis through the tender notice datedand after evaluation of the bids received, DMRC has accepted the bid of the Concessionaire herein and has issued them a Letter of Acceptance ('LOA') bearing No. _____ dated _____, requiring inter alia, the execution of this Concession Agreement within 30 (Thirty) days thereof after the satisfaction of all conditions precedent specified in the Bid and the LoA dated.....
- G. The concessionaire has paid to the DMRC the upfront fee of Rs.1 (One) crore.
- H. The Concessionaire has submitted the requisite Performance Security to DMRC;
- I. The Concessionaire represents and warrants that it/they have duly fulfilled all the terms and conditions necessary for the execution of this Agreement as per the terms contained in the bidding documents and are in a position to execute this Agreement and implement the Project as envisaged in the Bid and this Agreement

NOW THEREFORE, in lieu of the mutual promise and consideration set out herein DMRC and the Concessionaire (each individually a “Party” hereto, and collectively the “Parties”) hereby agree as under.

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

“Agreement” means this Agreement, and includes any amendments, annexures hereto made in accordance with the provisions hereof.

“Applicable Law” means all Acts, Rules and Regulations in force and in effect as of the date hereof and which may be promulgated or brought into force and effect hereinafter in India including judgements, decrees, injunctions, writs of or orders of any court of record, as may be in force and effect during the subsistence of this Agreement applicable to the Project and the Parties hereto.

“Applicable Permits” means all clearances, permits, authorisations, consents and approvals required to be obtained or maintained under Applicable Law, in connection with the “Project” during the subsistence of this Agreement.

“Bid” means the documents in their entirety comprised in the bid, including all clarifications, addenda and revisions issued by DMRC to the Bidders, the Proposal submitted by the successful Bidder (Concessionaire) in response to the Tender Notice in accordance with the provisions thereof. The words “Bid” and “Tender” are used synonymously.

“Change in Law” means the occurrence or coming into force of any of the following after the date of signing this Agreement:

- (a) the enactment of any new Indian law
- (b) the repeal, modification or re-enactment of any existing Indian law
- (c) any change in the rate of any Tax

Provided that Change in Law shall not include:

- (i) coming into effect after the date of signing this Agreement of any provision of a statute which is already in place as of the date of signing this Agreement or
- (ii) any new law or any change in existing law under the active consideration of or in the contemplation of any Government as of the date of signing this Agreement, which is a matter of public knowledge.

“Commencement Date” means the date on which access to the site to undertake the Project is allowed by DMRC to the Concessionaire, in accordance with the terms of this agreement.

“Completion” in relation to the Project shall mean completion of building civil works thereof (in accordance with the applicable byelaws and rules in force and approvals and sanctions received) including utilities & services such as Electricity, Water Supply, Sewerage, HVAC, Lifts & elevators, Fire fighting, and other common amenities as duly certified by the grant of Occupancy Certificate by the competent authority.

“Completion Certificate” means the final Occupancy Certificate issued by the competent authority, certifying the completion of the entire construction of the Project Facility and declaring the same fit for occupation.

“Concession Period” means the period beginning from the Commencement Date and ending on the Termination Date by efflux of time or sooner determination in accordance with the date of this Agreement.

“Consideration” shall mean and includes the payments to be made by the Concessionaire to the DMRC as provided in Article 3 hereafter.

“Damages” shall mean any claim of DMRC against the Concessionaire for breach of this Agreement, including but not limited to, losses, dues, arrears etc. against which DMRC shall be entitled to claim and adjust the Performance Security.

“Emergency” means a condition or situation that is likely to endanger the security of the individuals working for the Project or which poses an immediate threat of material damage to any of the Project Facilities.

“Force Majeure” or **“Force Majeure Event”** means an act, event, condition or occurrence as specified in Article 9.

“Governmental Agency” means Central or State Government or any ministry, department, commission, board, authority, instrumentality or agency, under the control of Central or State Government or any other local or municipal bodies or institutions 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.

“Independent Auditor” means the auditor appointed by DMRC to independently audit and verify all matters, expenses, costs and realizations of the concessionaire, which have been carried out by the Statutory Auditors of the Concessionaire.

“Maintenance Fee” shall mean the fee charged by the Concessionaire from sub-licensees and tenants for the maintenance and upkeep of the Project including all user charges.

“Parties” means the parties to this Agreement and **“Party”** means either of them, as the context may admit or require.

“Performance Security” shall mean the security to be furnished by the Concessionaire as provided in Article 3 hereafter.

“Permits” shall mean and include all applicable statutory, environmental or regulatory licenses, authorisation, permits, consents, approvals, registrations and franchises from concerned authorities.

“Project” shall have the meaning as set out in Recital E hereinabove.

“Project Facility” means the built up places and facilities, the Concessionaire is authorized to develop and license the use thereof to sub-licensees.

“**Site**” means the property namely the Specified Area at (Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar) Metro Station complex for Integrated parking cum commercial development as detailed in the Schedule A given on Concession by DMRC to the Concessionaire under and in accordance with this Agreement, on which the Project is to be developed.

“**Specified Area**” shall have the meaning as set out in Recital D.

“**Sub Licensee**” means all persons who are allowed by the Concessionaire to use the built spaces and facilities in the Specified Area.

“**Tax**” means and includes all taxes, fees, cesses, levies that may be payable by the Concessionaire under the Applicable Law to the Government or any of its agencies.

“**Termination**” means termination of this Agreement by efflux of time or sooner determination in accordance with the provisions of this Agreement.

“**Termination Date**” means the end of the concession period of 30 years from the commencement date or date of sooner determination of the concession period in accordance with the terms of this Agreement whichever is earlier.

1.2 Measurements and Arithmetic Conventions

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

1.3 Priority of contract documents and errors/discrepancies

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

- (i) This Agreement ;
- (ii) Schedules to this Agreement ;
- (iii) The Letter of Award issued to the Concessionaire ;
- (iv) The written clarifications and addenda issued to the Bidders ;
- (v) The Request For Proposal (RFP) document, including the Draft Concession Agreement.

ARTICLE 2

GRANT OF CONCESSION

2.1 Grant of Concession

- 2.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards DMRC by the Concessionaire, DMRC hereby grants and authorises the Concessionaire:
- (a) To have access to, develop, finance, construct, commission, operate, manage and maintain the Project and the Project Facility at the Specified Area during the Concession Period at the cost and risk of the Concessionaire;
 - (b) At the cost and risk of the Concessionaire's license to sub-license the use of the Project Facilities during the period of this Agreement and derive incomes there from in the form of license fees, maintenance charges and other user charges.
- 2.1.2 The Concessionaire shall not be entitled to allow the use of the Project Facilities by any other person or for any purpose other than to develop and construct the Project Facility and to sub-license the use to sub-licensees as specified in Article 2.1.1.
- 2.1.3 The Site given by DMRC to the Concessionaire in terms of this Agreement comprises the Specified Area namely a total land parcel of approximately _____ sq.m adjacent to the _____(Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar) Metro Rail Station more fully described and delineated in **Schedule A** attached hereto. The developer may prepare a composite plan taking into account the above existing DMRC operational structures, but he shall not be permitted to disturb them under any circumstance.
- 2.1.4 Nothing contained herein, including the act of granting permission to develop the Project Facility at the site and to license the use of the Project Facility or any part thereof shall vest or create any proprietary interest in the Project Facility or any part thereof including any permanent fixture, fitting, etc. installed in the structure of the Project Facility in favour of the Concessionaire or any Sub-Licensee or any part thereof or any other person claiming through or under the Concessionaire or sub-licensees. The Concessionaire shall not in any manner sell, transfer, assign, mortgage, charge, create any lien or otherwise encumber or deal with the Project Facility in any manner except the license to sub license the use of the Project Facility as provided under Article 2.1.1 above. The Concessionaire acknowledges, accepts and confirms that the covenant contained herein is an essence of this agreement and shall duly bind the sub-licensee to whom any license or authorisation is given for the use of the Project Facility.

2.2 Concession Period

- 2.2.1 The concession is hereby granted in favour of the Concessionaire for a total period of 30 (thirty) years from the Commencement Date subject, however, to sooner determination as provided in this Agreement, during which the Concessionaire is authorized to implement the Project and undertake the activities specified under sub-clauses (a) and (b) of Article 2.1.1 above.
- 2.2.2 At the end of the concession period or sooner termination of this Agreement for any reason whatsoever all rights given under this concession Agreement shall cease to have effect and the Site and Project Facility with all the furniture and fixtures and other assets permanently attached to the Project Facility shall revert to DMRC without any obligation to DMRC to pay or adjust any consideration or other payment to the concessionaire.

2.3 Restriction on licensing the use of the Project Facility or any part thereof:

- 2.3.1 The Concessionaire shall be entitled, during the subsistence of this agreement, to allow the use of the Project Facility through a sub-licensing arrangement to sub-licensees subject to the terms and conditions contained in this agreement and subject to all Applicable Laws.
- 2.3.2 The Concessionaire shall be entitled to sub license the use of the Project Facility, during the subsistence of this agreement only with a clear stipulation that sub-licenses granted shall terminate simultaneously with the termination of this Concession Agreement including on sooner determination of the Concession Period for any reason whatsoever. All contracts, agreements or arrangements with sub-licensees shall specifically stipulate this covenant of termination of the sub-licensees rights and further that the sub licensee shall not have any claim whatsoever against DMRC for any such termination.
- 2.3.3 The Concessionaire shall prepare a draft standard format of the sub license agreement or arrangement which the Concessionaire will be required to sign with the sub licensee for the use of the Project Facility. The Concessionaire shall furnish the draft of such deed to DMRC for modification or suggestion. DMRC shall be entitled to incorporate such clauses as DMRC may consider appropriate to protect DMRC's interest. The Concessionaire shall enter into sub-license arrangements as per the Standard format with the covenants stipulated by DMRC and the Concessionaire shall not incorporate or change in any clauses in the Deed that would have any adverse effect on the covenants incorporated by DMRC. In case of any deviation from the above-mentioned Standard draft of the deed in any particular circumstance, which supersedes or adversely affects DMRC's terms and covenants, the prior written consent of DMRC shall be taken before entering into any such agreement with a sub-licensee.

ARTICLE 3**CONSIDERATION TO DMRC**

- 3.1 In consideration of the rights, privileges and interests granted by DMRC to the Concessionaire in terms of this Agreement, the Concessionaire shall pay the following consideration to DMRC in addition to the due performance of all other obligations, responsibilities and liabilities assumed by the Concessionaire under this Agreement :
- (i) Fixed upfront Fee (Non – Refundable, non-negotiable) of Rs. 1 crore (Rupees One crore only) before signing of this Concession Agreement. The Concessionaire has paid this amount vide Payorder/ Cheque/ Draft No. _____ dated _____ drawn on _____.
- (ii) Recurring Payment on quarterly basis for the Specified Area (_____) of Rs. _____ (to be filled as per the accepted bid) payable from the day after the expiry of the period of 2 (two) years from the commencement Date, which shall be escalated at the rate of 5% every year from the due date of first payment.
- 3.2 At the time of handing over possession, the exact area of land shall be jointly measured between DMRC and the Concessionaire. The recurring payments shall be adjusted on pro-rata basis if there is any variation in the area between Annexure 7 Site Plan in the tender document and actual area made available at the time of handing over possession to the Concessionaire. No claim, damages or any compensation will be entertained by DMRC in this regard.
- 3.3 The recurring payment for the proposed location shall become payable after a moratorium of exactly two years from the date of handing over the site to the successful bidder (Concessionaire) by DMRC. This two year period will be available to the concessionaire for development of the property. However, it is expressly clarified that the recurring payment will start at the end of two years from the date of handing over the site even if the developer has not been able to develop and put the property to the intended use for whatsoever reason it may be.
- 3.4 The concessionaire shall make the Recurring payments under Article 3.1(ii) above for each quarter within seven days of commencement of the respective quarter.
- 3.5 Any delay in payments of the amounts becoming due on the due dates shall constitute a willful material default on the part of Concessionaire and the DMRC shall encash the Performance Security and claim damages from the Concessionaire and be entitled to even terminate the Agreement as mentioned in Article 3.6 dealing with Performance Security. This shall be without prejudice to other rights of DMRC against the Concessionaire. In addition, DMRC shall be entitled to charge interest at

the rate of 1.25 percent per month for delay in the payment of the amounts due to DMRC.

3.6 Performance Security

- 3.6.1 The Concessionaire shall for the due and faithful performance of its obligations, provide to DMRC cash deposit/ Bank Guarantee/ Demand Draft / Pay Order from a scheduled commercial bank (except Regional Rural & Local Area Bank) acceptable to DMRC, and payable at New Delhi of Rs _____ crore (Rupees _____ crore only). This Performance Security shall be submitted along with the Upfront Payment to DMRC. The Performance Security shall be kept valid on a rolling basis till the end of the Concession Period.
- 3.6.2 The said Performance Securities shall be returned by DMRC after the expiry of the Concession Period subject to fulfilment of all handover requirements by the Concessionaire, to the satisfaction of DMRC and further subject to adjustment for all damages suffered by DMRC.
- 3.6.3 If the Concessionaire defaults in any payment for more than 60 days from the due date as per the provisions of this agreement, DMRC shall be entitled to encash the Performance Security without being liable in any manner whatsoever to the Concessionaire and to appropriate the Performance Security as 'Damages', without prejudice to other rights and claims of the DMRC.
- 3.6.4 Upon encashment of the said Performance Security, the Concessionaire shall submit a fresh Performance Security within 7 (seven) days of receiving a written notice from DMRC. If the Concessionaire fails to submit the second Performance security within the stipulated time, DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 10, without being liable in any manner whatsoever to the Concessionaire and to appropriate the Performance Security as 'Damages'.
- 3.6.5 In case after submission of the fresh Performance Security, the Concessionaire has defaulted, DMRC shall be entitled to terminate this Agreement in accordance with the provisions of Article 10, without being liable in any manner whatsoever to the Concessionaire and to appropriate the Performance Security as 'Damages'.

ARTICLE 4**PROJECT DEVELOPMENT AND OPERATIONS****4.1 Entry to the Site for work**

- 4.1.1 DMRC shall allow the Concessionaire access to the area earmarked for the Project Facility as detailed in schedule A to the Concessionaire for undertaking the work relating to the Project within 30 (thirty) days of signing of this Agreement. In case such access to the concessionaire gets delayed for force majeure reason or for reasons solely attributable to DMRC with no contributory factor on the part of the Concessionaire, the date of Commencement of the Concession period shall be proportionately extended.
- 4.1.2 In the event Force Majeure reasons preventing access to the concessionaire continue for more than 180 days as envisaged in Article 4.1.1 above, either DMRC or the Concessionaire shall be entitled to terminate this agreement. In such event DMRC shall return the amount of Rs. _____ (Upfront payment + Performance Security) paid by the concessionaire to DMRC. There shall be no further liability or obligation of either party towards the other.

4.2 Use of the Project Site and Peaceful Possession

- 4.2.1 The Concessionaire, subject to complying with the Terms and conditions of this Agreement, shall have the use of the Site during the Concession Period in accordance with the terms of this Agreement and limited for the purposes mentioned in Article 2 above. The concessionaire shall not use the site or the Project Facility for any other purpose.
- 4.2.2 The Concessionaire shall confine its operations to the Project Site. The Concessionaire shall take all necessary precautions to keep persons and equipment within such areas, and to keep and prohibit them from encroaching, damaging or degrading or affecting adversely the _____ (Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar) Metro Railway Station Premises or otherwise cause any interference to the passengers, visitors, employees, representatives and agents of the DMRC.
- 4.2.3 The concessionaire acknowledges and accepts that the nature of the commercial development in the subject property is subservient to the Station use and to serve commuters' interest and accordingly such development should not be an impediment for the smooth functioning of the Station's core operations of the DMRC as envisaged in the Recitals.
- 4.2.4 The Concessionaire shall ensure at all times during the Concession period that its activities as well as those of its sub-licensees or any other person acting under or

through them do not cause any inconvenience to commuters and/or disturb/disrupt in any manner or create an impediment for the smooth functioning of the operations of DMRC. For this purpose, the Concessionaire is required to introduce and observe at all times, appropriate measures for safety, security and orderliness on the premises granted to the Concessionaire.

4.3 Detailed Scope of Work for Development & Construction of the Project

The Concessionaire shall, at its sole expense and risk, carry out the design, engineering, financing, procurement, management, operations and maintenance of the Project Facility at the Site in accordance with the provisions of this agreement.

The key component of the project includes:

- ➔ Multi level parking
- ➔ Commercial development

4.3.1 Development & Construction of the Multi level Parking Facility

The Concessionaire shall design the parking area so as to provide adequate parking space for users of the Commercial Area as well as Metro Rail commuters. The requirement of parking space shall be calculated in accordance with Master Plan of Delhi with Addendums to Master Plan if any and/or Buildings bye Laws. The Concessionaire shall also finalise traffic diversion plans and alternate parking plans (for existing users of the site) and get the approval from the concerned authorities at least 2 weeks prior to commencement of the construction. Bidder is free to chose a parking arrangement –

- 1) Manual parking system
- 2) Semi - Automated parking system
- 3) Fully automated parking system

Concessionaire shall provide state of art facility for his chosen parking system.

For mechanised parking the governing creteria would be the retrival time not exceeding 180 seconds. Concessionaire shall chose an appropriate & proven technology for mechnised parking that will provide smooth & reliable functioning with minimal maintainence.

Nevertheless it is to be clearly understood by concessionaire that provision for adequate parking as per Clause 4.3.1.1 will be his responsibility.

4.3.1.1 Construction requirement of the Parking Facility

(I) Parking Structure

Janakpuri (West) & Kanhiya Nagar are currently being used for parking cars/ Two wheelers of commuters using the Delhi Metro. In the proposed structure the concessionaire shall make arrangements and provide at all times commuter parking as:

Site	Janakpuri (W)	Rajouri Garden	Pitampura	Kanhiya Nagar
ECS	700	550	350	575

- (i) In the parking facility constructed by the developer/ concessionaire, DMRC will select the portion that will be used for commuter parking.
- (ii) Commuters parking will get overriding preference all the time during concession period.
- (iii) If due to any reason the commuters parking or a part thereof is not functional the other parking of developers share will be made available for commuter parking to the extent required to make up for commuters parking as per table above.
- (iv) Commuters parking shall be operated & maintained by the concessionaire, under the control of DMRC. Parking charges levied for commuters parking will be as determined and approved DMRC. Revenue generated thereof, though, will be retained by concessionaire.
- (v) Proper maintainace alongwith annual maintenance & all repairs including all expenses required thereof,to keep the commuters parking in good running condition all the time as per predetermined performance standards, will be the responsibility of the concessionaire.
- (vi) Metro commuters parking consist of good proportion of 2- wheelers parking. These will be suitably provided for either in the parking facility or on ground by leaving appropriate ground coverage for this purpose.
- (vii) Additionally the Concessionaire shall create adequate parking facilities for the Shopping Mall commercial development as per applicable building control regulations.
- (viii) Concessionaire should explore the possibility to automate the day – to – day operation of parking lots.
- (ix) The system should be capable to use existing DMRC card (presently used as stored value ticket for multiple journey) for payment of parking fee.
- (x) Concessionaire would be required to provide for Smart Card readers, ticket dispensers etc. to organise payment of parking charges through DMRC Smart Card system.

(2) Lighting

Concessionaire shall provide adequate lighting system along Walkways and Parking facility area, in accordance with applicable standards (NBC, etc). The subway and stairways, Toilets and Entry and Exit Areas for Parking shall be provided with auxiliary emergency lighting system such that in the event of failure in general power supply the auxiliary emergency lighting system is activated immediately.

(3) Signage

The Concessionaire shall provide illuminated signages in accordance with NBC / other applicable standards at suitable locations within the Parking Facility. The Scheme for signages shall be finalised in consultation with DMRC.

(4) Drainage

The Concessionaire shall design and implement a drainage facilities in such a manner that there is no stagnation of water in Project Site. The internal drainage system shall be connected to the main common drain at an appropriate location in accordance with the approved drawings.

(5) Safety Barriers

The Concessionaire shall provide, at appropriate locations, safety barriers to effectively manage pedestrian and vehicular traffic.

4.3.1.2 CODES AND STANDARDS

The Concessionaire shall carry out the design and construction of the Project Facility in strict compliance with all applicable laws, in particular, applicable Building Codes and Standards and good industry practice.

4.3.1.3 Additional Guidelines in case of Automated parking facility

The concessionaire shall develop a plan for providing Parking Facility at the Project Site, which shall adhere to following guidelines:

(1) Parking Structure

In case the bidder proposes to use mechanised parking arrangement, he must adopt a proven technology, which is already in use. He must give sufficient technical details regarding system to be used.

TABLE - DESIGN OF PARKING STRUCTURE

Fixed design parameter	Permissible limit
Minimum dimensions and weight of a car (general category) to be considered	Length – 5.05 m Width – 2.15m Height –1.80m Weight -1800kg
Minimum dimensions and weight of a car (SUV category) to be considered	Length – 5.20m Width – 2.20m Height –2.20 m– Weight -2500 kg
Required arrangement for convenient parking by Physically challenged drivers (2% of total ECS capacity) will be provided.	

TABLE - COVENANTS

S. No	Type of parking facility	Item description	Covenant
1	Manual parking	Depth of construction, below ground	Should not exceed three basement levels
2	Manual parking	Height of parking, without elevators	Should not exceed three floors
3	Manual parking	Height of each basement floor	Should not exceed 3.00 m
4	Semi- automatic (required human intervention in vehicle hanging below ground)	Depth of construction, below ground	Should not exceed three basement levels or 12 m
5	Manual parking	Space for calculating one ECS within parking structure	Not less than 28 m ² per ECS for ground floor covered parking and 32 m ² per ECS for underground & above the ground parking facility
6	Manual parking/ semi automatic	Bay/ slot dimension per car space	Not less than 5.2 m long and 3.25 m wide
7	automatic / semi automatic (if mechanical parking bays are proposed)	Space per ECS	Not less than 15 sq. m
8	Manual parking/ semi- automatic	Air conditioned	Preferable, but not mandatory. However, mechanical ventilation must be provided to permit a minimum of 15 air changes per hour for normal ventilation and 30 air changes per hour in case of fire or distress call
9	Fully automatic	Retrival time	Not more than 3 minutes
10	Semi automatic (operator assisted)	Retrival time	Not more than 5 minutes
11	Manual/ semi automatic (if ramps is provided)	Gradient of ramp	Not more than 1:7:5 with minimum transition space of 5 m at the start and termination of the ramp with

			gradient of 50% of the main ramp
12	Manual/ semi automatic	Width of ramp	Minimum of 5.5 m width and only one way
13	Manual/ semi automatic	Straight turning radius Helical length turning radius Lot turning radius	Minimum 7.5 m Minimum 10 m Minimum 5.5 m
14	Automatic/ semi automatic (if car lifts are used)	Number of car lifts	A minimum number of 3 car lifts each for entry and exit with atleast one lift each for entry and exit as stand by
15	Manual/ semi automatic/ automatic	Carriageway of pavement for circulation space within parking facilities	Not less than 4 m, if one way, and not less than 6m if it is two ways flow
16	Automatic/ semi automatic	Power back up	Not less than 100% with automatic switch over mechanism
17	Automatic/ semi automatic	Sound emission	Not more than 40 dba

Minimum delay is caused to users of the parking facility and the maximum queue length at any of the entry area to enter the facility shall not ideally exceed three cars, at any point of time, except under exceptional circumstances.

(2) Entry and Exit Areas of the Parking Facility

- (i) **Location:** Location of the Entry and Exit Areas and of the driveways alongwith their connection to the road system will be made properly.
- (ii) **Size:** The Entry and Exit Areas must be sized to allow drivers to safely and comfortably drive in and out the vehicle. Turning radii and width of drive aisles and minimum clear width of Entry and Exit Area shall be designed according to the respective needs and leaving adequate space to the left and right of the car for passengers to leave / enter the car and in accordance with Applicable Codes.
- (iii) **Components:** Motion detectors and CCTV cameras or similar devices shall be installed inside the Entry and Exit Areas to ensure that no person or animals are inside the Entry and Exit Areas or vehicle when the machine starts moving. Cameras shall be installed to record digital photos of the physical condition of the car entering and exiting the premises. The images are also helpful to locate cars for drivers with a lost ticket and to validate damage claims.
- (iv) The Entry and Exit Areas entrance doors shall be mounted, secured and operated safely, isolating the passengers from the Entry and Exit Areas during movement of the

machinery and vehicles. Safety locks / emergency switches shall be installed to stop any machinery if a person or animal is detected in this area.

- (v) Recesses in the floor area shall be minimized to the need of guiding the drivers in the “drive-in” process. All other areas shall be flat for pedestrian traffic. Gaps between moving parts and platforms need to be limited as per Applicable codes.
- (vi) All Entry and Exit Areas must comply with disability requirements.
- (vii) The driveways for inbound and outbound traffic shall be designed to provide sufficient queuing spaces; simple visual signage and guidance shall clearly direct approaching traffic off the street and into the Entry and Exit Areas. Respective commands via a visual message centre shall be applied inside the Terminals for the drivers in such manner that an easy use of the system is possible.
- (viii) Inbound / outbound traffic crossing shall be prevented.
- (ix) Inside and outside Entry and Exit doors shall be provided to prevent drivers and animals from coming into contact with any moving elements of the system.
- (x) As Entry and Exit Areas are the exchange station of the Parking Structure, special attention shall be directed to ease the “drive-in” and positioning of the car by the drivers (preferably by means of physical aids);
- (xi) Means of catching of debris and drippings from the incoming cars shall be applied to avoid such drippings to cars and machinery inside the terminals, during transportation and storage inside the system.
- (xii) The Ticketing Station or access system shall be located outside the Entry and Exit Areas on the right side of the inbound traffic.
- (xiii) If the system has installed a radio frequency access system, the readers shall have enough range to detect approaching vehicles from at least 9 meter outside of the Entry and Exit Areas.
- (xiv) **Lobby Space:** The Automated Facility shall be equipped with sufficient lobby space to hold the expected peak accumulation of drivers waiting for retrieval of their cars. The pay stations or other access readers shall also be located inside the Lobby. Also sufficient electronic message centres shall be provided to guide the drivers to the respective location to meet their car. Minimal/ essential public convenience say 5 urinals, 2 W.C., 3 washbasins with mirror, 1 ladies toilet with washbasin (mirror) alongwith 4 no. drinking water fountains will be provided in the Parking facility, in the near vicinity of the Lobby. The operator room shall be located near the Lobby to enable the operator to assist drivers and to oversee the operation of the Parking Structure.

(3) Throughput Capability

The throughput of a system is the minimum number of cars a system can store or retrieve (measures in by any random one way traffic), in the timeframe of one hour.

Dwell time is defined as the total time a driver takes to drive into the system, leave the car, exit the system and buy a parking ticket. In case of exiting the system, Dwell Time is the time taken by the driver to return the parking ticket, identify his car, and drive it out of the system. A reasonable average dwell time (entering/ exiting) of 30 seconds per car driving into the Entry and Exit Areas can be assumed if physical drive-in guidance is provided. In the absence of such physical guidance system, an average dwell time of 60 seconds shall be considered.

(4) Fire Safety

- (i) Fire safety measures as recommended in applicable codes shall be implemented.
- (ii) Provisions shall be made in an Automated Parking Facility that leakage of gasoline tanks or other flammable fluids are collected during transportation and storage of the vehicle.
- (iii) Construct the 'Automated Parking Facilities' structure and the equipment with non-combustible construction with a specified fire resistance. In addition, those portions of the facility used for the transport and / or storage shall have a finish of non-absorbent, non-combustible material. Where the Automated Parking Facility is located below a building, 2-hour fire resistance rated separation shall be provided between the Automated Parking Facility and the adjacent space use.
- (iv) As the nature of an Automated Parking facility provides the means to transport a vehicle without human interference, provisions shall be provided to detect a vehicle on fire and to transport it to a fire extinguishing cell at a space on ground floor, easy accessible for fire fighters.

(5) Ventilation / Air Conditioning

- (i) Areas accessible to the public / drivers shall be equipped with sufficient air conditioning and ventilation.
- (ii) The storage area of the System in which no driver enter but only maintenance crews, may be unconditioned space although some ventilation emissions is required inside the storage area. Depending on the design of the Entry and Exit Areas, a ventilation of emissions may be required in that area.

(6) Lighting / Accessibility for Maintenance

- (i) Lighting in areas accessible to the drivers / public shall be properly illuminated.
- (ii) The parking structure shall be designed such, that maintenance personnel has access to all storage spaces, machinery and electronic components in a safe manner. The usage of harnesses is acceptable as long as OSHA criteria are followed.

(7) Graphical User Interface / ON – Line Support

- (i) Automated parking Facilities shall be furnished with a Graphical User Interface (hereafter referred as "GUI") or Human Machine Interface (hereafter referred as "HMI"). This

interface shall be positioned in the Control-Room. The GUI shall show the geometry of the entire system with occupancy and all installed machines moving in real time. The GUI shall be capable of running fully automated without human assistance; it shall have manual and maintenance mode and the capability of System Diagnostic of all critical mechanical, electrical and electronic equipment.

- (ii) The parking facility shall have an installed and all time workable capability to the manufacturer / technical operator with a short response time to handle any alarms generated by the system.

(8) Diagnostics

- (i) Automated Systems may include a Graphical User Interface (GUI), or Human Machine Interface (HMI). These devices are computer models of the layout of the Parking Facility illustrating the movement of the various transport devices within the Parking Structure and Entry and Exit Areas and are designed into the software and displayed on the computer screen. This interface shall be positioned in the control-room. The GUI shall show the geometry of the entire Parking Facility with actual occupancy and all installed machines reflecting real time movements / positions of machinery and stored vehicles.
- (ii) The GUI, shall be capable of running fully automated without human assistance; it shall have manual mode and maintenance mode operations and the capability of System Diagnostic of all critical mechanical, electrical and electronic equipment components.
- (iii) The Parking Facility may have an installed and real time, on-line connection to the manufactures / technical operator which allows for resolution of most errors remotely with a short response time in reaction to any trouble alarms generated by the system.
- (iv) The Parking Facility shall be capable of reporting false alarms in different classes according to their severity for the System functionality. It shall report the need of component checks for proper performance of the different components. Preferably, a hotline support line shall be implemented to enable a remote system support.

4.3.2 DEVELOPMENT & CONSTRUCTION OF THE COMMERCIAL

The nature of the activities and facilities that can be allowed in the shopping mall is as under:

- Hypermarket/Shopping plazas/shopping complex
- Retail Showrooms for Consumer goods / Garments / Electronics etc.
- Restaurants, Food Courts/supermarket/department store
- ATMs
- Multiplex without cinemas/ office buildings
- Service apartments

4.3.2.1 CONSTRUCTION REQUIREMENTS FOR COMMERCIAL DEVELOPMENT

The Concessionaire would be at liberty to design the commercial development, subject to approval by DMRC/ other authorised agencies and as per Applicable By-Law.

4.3.3 PROCEDURE

4.3.3.1 Before Commencement of Construction

Prior to commencement of construction of any of the Project Facilities, the Concessionaire shall obtain all applicable Permits from DMRC & concerned local authorities, necessary to commence construction of such Project Facilities;

Since the proposed development is near the station complex and will also be interconnected, before applying to any other competent authority for sanction of the scheme the Concessionaire is required to first obtain DMRC's written approval on his proposed drawings and specifications to ensure that the proposed developments do not conflict with the DMRC's activities and functional requirements, structural aspects, utilities and all traffic movement requirements. It is agreed that DMRC shall not unreasonably interfere with the internal layout of the complex proposed by the Concessionaire. DMRC shall convey its decision after scrutinising the submission. If DMRC is not satisfied and raises any objections, the Concessionaire shall be required to appropriately amend/modify his scheme / plans within a reasonable time frame and seek DMRC's approval once again. The Concessionaire shall approach any other competent authority for sanction of the design etc. only after receiving the written approval of DMRC.

Bidder is solely responsible for formulating the integrated parking cum commercial complex in accordance with the provisions of MPD 2021 and the applicable byelaws of civic authorities including regulations of the statutory/ regulatory authorities like DUAC, DPCC, DFS etc. and obtain all clearances from these authorities. DMRC will not be responsible for anything in this regard. Its roles will be limited to extending assistance to the concessionaire in his efforts to obtain clearances.

4.3.3.2 During Construction

a. The Concessionaire shall :

- (i) Strictly follow the guidelines on quality as set out in applicable codes in addition to specific guidelines prescribed in this agreement for Parking Structure.
- (ii) Ensure that the construction of the Project Facilities is undertaken with minimal inconvenience to the traffic using the roads surrounding the Project Site.
- (iii) Take the necessary precautions to minimize accidents and respond to Emergency as quickly as possible;

- (iv) Take precautions to avoid inconvenience to, damage to, destructions of or disturbance to any third party rights and properties;
- (v) Provide a safe, clear and informative system of road signs in connection with the project, wherever required;
- (vi) Ensure adequate safety of the personnel deployed at the project site, which would include measures for the safety such as the provision and maintenance of barricades, traffic signs and illumination during night in consultation with the DMRC.
- (vii) Be in compliance with the Applicable Laws and Applicable Permits obtained for the project including the clearances obtained by the Government Agency.
- (viii) Deploy adequate number of qualified and competent personnel having relevant experience and skills for implementation of the Project and interaction with the DMRC.

b. The Concessionaire shall be responsible for

- (i) the accurate setting-out of the Project Site;
- (ii) the correctness of the positions, levels, dimensions and alignment of all part of the works;
- (iii) Shifting of Utilities/ Other Services

The bidder will be responsible for shifting of various utilities/ services, if passing through the parking area and if shifting of the same is required for taking up the development of parking cum commercial complex by the developer. It will be done by the concessionaire on its own cost. DMRC will not pay anything on this account. DMRC shall however assist in the required Liaoning with the agencies concerned.

c. Site Safety and Security Measures

- (i) Within 30 days from the date of this Agreement the Concessionaire shall provide to DMRC details of its safety plan and procedures for the Works. The Concessionaire shall comply with all safety regulations applicable, in its design, access arrangements and operations on Project Site. Unless otherwise stated in this Concession Agreement, the Concessionaire shall, from the commencement of work on the Project Site until the expiration of this Concession Agreement, provide fencing, lighting, guarding and watching of the works and facilities. The Concessionaire shall be responsible for the operation of machinery and any other work and shall take all precautions to ensure safety of the staff, labourers and public.
- (ii) The Concessionaire shall be responsible at its cost, for procurement, transport, receiving, unloading and safe keeping of all plant and machinery, equipment, materials and other things required for the construction and operation and maintenance of the facilities.

- (iii) Unless otherwise stated in this Concession Agreement:
- The Concessionaire shall be responsible for keeping unauthorised persons off the Project Site, during the construction period
 - Authorised persons during the construction phase shall be limited to the employees of the Concessionaire, employees of Subcontractors of the Concessionaire, and employees and persons authorised by DMRC.
- d. The Concessionaire shall arrange for all the material requirements for the Project and disposal of all material wastes. The Applicable permits in this regard would have to be obtained by the Concessionaire. All excess and unsuitable excavated materials shall be piled at appropriate dumping places or otherwise disposed of by the concessionaire in consultation with the DMRC.

4.3.3.3 After Completion of Construction

- a. Upon completion of construction but prior to issue of the Completion Certificate, the project site shall be cleared of all construction equipment, surplus materials, debris and temporary installations and shall be left in tidy and an aesthetically pleasing appearance to the satisfaction of the DMRC.
- b. Prior to making the request for the issue of Completion Certificate by competent authorities, the Concessionaire shall submit to DMRC the Operation and Maintenance Manual for the project (O& M Manual) setting out in detail the standards, schedules, procedures, type, periodicity and other details of the operation and maintenance activities to be carried out for the project during the Operations Period so as to meet the O&M Requirements as well as details of the management information system to be incorporated, reports to be submitted and procedure for reviews.

- 4.4 The Concessionaire may use or allow the use of the Project Facility for other activities, which are not envisaged in Clause 4.3, only after prior written approval of DMRC.
- 4.5 The Concessionaire shall carry out the design and construction of the Project Facility in strict compliance with all applicable laws in particular, applicable Building Codes and Standards and good industry practice.
- 4.6 Subject to terms of this Agreement, the Concessionaire shall be free to design the layout plan and undertake the subdivision and partitioning works, interior design works along with utilities like power supply, water supply, toilets, drainage, HVAC, fire fighting, and telecommunications. Provided that: (a) the Concessionaire, the sub-licensees and their representatives, agents and other persons undertaking works shall duly adhere to the provisions of all Applicable Laws including and in particular the prevalent Delhi Building Bye-Laws and specified guidelines /requirements of other competent authorities. (b) the facilities and works being undertaken or installed shall not in any manner affect, hinder or interfere with the free movement of the passengers, DMRC's staff agents and representatives and visitors. (c) the width of passages and common areas for movement of persons in the Project Facility shall be kept as per prevalent Delhi Building Bye-Laws. (d) no material is stored or kept outside the site or in the common area meant for movement of persons; and (e) no surplus construction machinery and materials, including hazardous materials and wastes shall be left at any place in the Site or the station.
- 4.7 Save as on account of Force Majeure reasons or reasons solely attributable to DMRC with no contributory factor of the Concessionaire, the Concessionaire shall have to complete in all respects the development of the project and project facilities not later than 2 (two) years of the Commencement Date and DMRC may thereafter be entitled to restrict the construction on the site. The Concession period shall be restricted to thirty (30) years from the Commencement Date notwithstanding the time allowed for completion under this clause. For delays on account of Force Majeure reasons or reasons attributable solely to DMRC with no contributory factor of the Concessionaire, Concession Period shall be extended accordingly by the 'period of delay', but no financial claims shall be entertained by DMRC on this account.

- 4.8 *The developer shall arrange for power supply requirements including required power back up on his own and shall solely be responsible for all aspects related to it. DMRC shall not be responsible in any manner whatsoever to either the Concessionaire or his contractors or agents and sub-licensees for any default or failure by the Concessionaire to comply with statutory requirements, design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at site etc. DMRC shall not bear any costs associated with it.*
- 4.9 The Concessionaire shall make its own fire-fighting arrangements for the commercial complex. Such fire-fighting arrangements shall conform to the IS Code of Practice / Delhi Fire Services norms since the aforesaid property, being part of the main station building and further being interconnected, becomes even more sensitive from the aspect of fire hazards.
- 4.10 The Concessionaire shall be solely responsible and liable for development and implementation of the Project Facility. DMRC shall not be responsible in any manner whatsoever to either the Concessionaire or its contractors or agents and sub-licensees for any default or failure by the Concessionaire to comply with statutory requirements, design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at site, etc. DMRC shall not bear any costs associated with it.
- 4.11 It is the Concessionaire's sole responsibility to obtain all necessary clearances and sanctions from competent authorities for approval of the various things such as fire fighting etc. required to be installed at the Project Facility. DMRC shall only provide assistance wherever possible, on best effort basis (without any legal and binding obligation) to facilitate the process.

4.12 OPERATIONS & MAINTENANCE OF THE PROJECT FACILITY

4.12.1 PARKING FACILITIES (Mechanical or conventional)

Concessionaire shall

- (i) To prevent unauthorised, random, haphazard parking of any vehicle within the No Parking Zone declared by DMRC in the project area and deal with vehicles violating the regulations in appropriate manner as advised by DMRC.
- (ii) To ensure free, organised and quick movement of all vehicles entering, exiting and within the parking area, and prevent undue queuing of vehicles.
- (iii) To ensure that the parking and circulation areas are well maintained through regular repair of the pavement, walls and other structures, painting of walls, columns, ceilings, metal structures, and markings for individual parking slots/bays at all times.

- (iv) To ensure that the entire parking area is maintained clean and free of litter, dust, waste materials, debris, obscene materials etc. at all times through regular sweeping, washing & cleaning at all times.
- (v) To install and maintain computerised entry, exit and signalling systems and issue swiping cards with magnetic strips for daily users.
- (vi) In case of breakdown of computerised systems, deploy adequate staff for manual operations till the mechanised systems are restored.
- (vii) To get the machines/systems repaired and functional within a maximum period of 2 days in case of such breakdown.
- (viii) To ensure adequate lighting in the parking area and signages for directions.
- (ix) To ensure proper, round-the-clock safety and security of people and vehicles at all the parking lots through manual staff, CCTV, etc.
- (x) To collect charges for parking from the users by issuing proper receipts and maintain computerised records of collection. For commuters' parking charges will be as determined and allowed by DMRC.
- (xi) To ensure that the parking staff deal with all people who come for parking their vehicles in a courteous, polite manner and prevent undue harassment to public.

4.12.2 Special provisions for Maintenance - in case of Automated parking system

- (i) In order to ensure operational safety, the Concessionaire shall enter into Contract(s) with Equipment Supplier(s) for maintenance of the equipment(s) during for the entire Concession Period in order to avoid System interruptions as much as possible and to remedy such interruptions in a reasonable time.
- (ii) Under all circumstances without any exception, trained personnel must be available round the clock at short notice. The Concessionaire shall enter into contract with manufactures to provide a trained technician for the prevention and remedy of interruptions during all hours of operation of the Parking Facility. The Concessionaire shall enter into an agreement with the manufactures for training Concessionaire's on-site personnel to the degree, that they are capable of retrieving a car in semi-automatic mode of operation.
- (iii) The entire Parking Structure shall be adequately illuminated primarily for maintenance access. Portable task lighting outlets shall be provided for enhanced lighting for repairs, diagnostics and maintenance.
- (iv) The system shall be designed such, that maintenance personnel has to access to all Parking Facility, machinery and electrical and electronic components in a safe manner.

4.12.2.1 Spare Parts Package

- (i) Enough spare parts shall be stored at the Parking Facility to ensure and immediate availability of exchange components in any case of a component failure.

- (ii) In order to ensure needed repairs to be performed in a timely manner, the manufactures and Concessionaire shall agree for a respective maintenance contract, covering the operating times of the Facility including a sufficient on-site spare parts package.

4.12.3 Commercial Area

- (i) To ensure that floor, walls and ceilings in corridors and common areas are kept clean, litter free, stain free at all times.
- (ii) Exteriors and interiors of the building, especially structural elements, shall be inspected, repaired and painted on regular basis. Repair of damaged civil structure, cladding material/finishes, doors & windows, furniture and fixtures, plumbing, sanitary, electrical and HVAC works etc. for common areas in the interior (like passages, toilets, lobbies, ramps, lifts and staircase, etc.) as well as exterior shall be carried out promptly. Log of all inspection, repair and maintenance work shall be maintained and available for inspection by the Lessor or its authorised representative at all times.
- (iii) External surface of glazing of all buildings including shops & parking shall be cleaned on a regular basis and log of this shall be maintained.
- (iv) To prevent encroachment of corridors and common areas and ensure free passage for movement of people, goods at all times.
- (v) To ensure adequate lighting of the corridors and common areas such as lobbies, terraces etc.

4.12.4 SECURITY SYSTEM & ACCESS CONTROL

- (i) To ensure overall safety and security of people and vehicles in the entire project area round the clock.
- (ii) To prevent encroachment and hawkers (except in permitted zones) in the entire project area.
- (iii) To operate and maintain the entire and complete CCTV and Access Control system.
- (iv) To ensure all card readers, barriers, door control units are in perfect working condition and carry out periodic checks to ensure signals are received at the central monitor as designed and handed over.

4.12.5 WATER SUPPLY

Developer shall arrange the water supply on his own and shall solely be responsible for all aspects related to it. DMRC shall not be responsible in any manner whatsoever to either the Concessionaire or its contractors or agents and sub-licensees for any default or failure by the Concessionaire to comply with statutory requirements, design and construction as per the Applicable Laws in particular Building Codes and Good Industry Practice, observance of safety and security measures at site, etc. DMRC shall not bear any costs associated with it.

4.12.6 STORM DRAINAGE & SEWAGE DISPOSAL

- (i) All chambers, manholes, catch basins etc. and lines should be clear at all times through regular cleaning and de-silting and choking, if any, shall be attended to promptly.
- (ii) All gratings and covers should be in place at all times and losses, if any shall be replaced promptly.
- (iii) All pumps, panels and controls for evacuation of storm water and sewage shall be maintained in proper working order at all times.

4.12.7 SOILD WASTE MANAGEMENT

All public spaces, common areas, circulation areas, etc. shall be swept and maintained clean and free of litter, dust, waste, debris, etc. on a continuous basis.

4.12.8 VENTILATION SYSTEM

- (i) To ensure all blowers, axial flow fans, extractors, air washers and their indicator and control panels are functioning to specified design parameters and the equipment and system (both ventilation and water services) are in an acceptable running condition.
- (ii) To ensure all birds screens, louvers etc. are maintained in a proper fashion.
- (iii) To keep a check on noise levels of the ventilation system and ensure there is no excessive vibration.

4.12.9 FIRE DETECTION & ALARM SYSTEM

- (i) To operate and maintain the entire and complete Fire Detection and Alarm, Fire Fighting and EPABX system.
- (ii) Ensure that fire reserve tanks (underground / overhead) are always full and no misuse for other purpose is made.
- (iii) To ensure all smoke & heat detectors and sprinklers i.e. all detectors / sensors and the system as a whole are in perfect working condition at all times and to carry out periodic checks to ensure the appropriate alarm is raised as designed and handed over. A log of all such tests shall be maintained.
- (iv) To periodically operate the Ventilation and Smoke Exhaust System through the fire Detection Panel to ensure their proper functioning at all times.
- (v) To ensure proper maintenance of all indicators, panels and alarms.
- (vi) To ensure proper maintenance of panic exit devices.
- (vii) To ensure deluge system is maintained at all times.
- (viii) To test operate all types of fire extinguishers periodically and to maintain a log of expiry dates and replacements.
- (ix) To maintain properly and keep ready for use at all times all fire pumps, jockey pumps, standby diesel pumps and their controls and panels and ensure all fire lines can withstand the specified water pressure.

- (x) Ensure no obstruction is created (by means of parking or otherwise) in front of fire hydrants and fire hose reel cabinets.
- (xi) Ensure all access roads for fire tender movement, as designated, are kept free all the times.
- (xii) To carry out periodic fire drills.
- (xiii) To have inspection carried out by the Fire Department and keep all clearances valid at all times.

4.12.10 COMPLAINT REDRESSAL

- (i) The Contractor shall open a Customer Service Centre at a suitable location easily approachable, for registering written or telephonic complaints.
- (ii) All complaints by users/occupants, shall be attended to promptly, within 1 hour of the complaint's registration..
- (iii) All the cases of these complaints & the remarks should be documented and the efficiency in service delivery will be one of the criteria governing the performance of service provider.

4.12.11 The Concessionaire shall be solely responsible and liable, at his own cost, for all maintenance, upkeep and repairs of the Project Facilities and all its components, including buildings, access ways, pavements, green areas, utilities and services and allied works as per best industry practices and Applicable Laws and Applicable Permits. The Concessionaire shall also carry out rectification of defects in the design or construction of any component of the works at its own cost.

4.12.12 DMRC shall not be liable to any sub-licensee or end-user or visitors for any laxity or default by the Concessionaire in proper upkeep and maintenance of the Project Facility or any of its components.

4.12.13 The Concessionaire shall carry out all checks and maintenance or repair works with adequate advance notice in such a planned manner that there shall be minimal disruption of the operations of the Station.

4.12.14 DMRC may inspect the Project Facility at any time for its own assessment of the compliance by the Concessionaire with its maintenance obligations under this Agreement. The Concessionaire shall extend all reasonable assistance to the DMRC representatives during such inspection visits.

4.12.15 The Concessionaire shall at its cost, carry out its own periodic inspections, and also assist DMRC or its nominee (whenever requested) to carry out any random or periodic inspection of any part or component of the works. The cost of any test, if required, shall be borne by the Concessionaire.

4.12.16 Co-ordination

The Concessionaire shall, upon request by DMRC, co-operate the co-ordination of the works with the work of any other persons to whose systems the facilities are to be connected, provided that such co-operation shall not empower the concessionaire to unreasonably interfere with the carrying out of the works. The Concessionaire shall afford all reasonable opportunities for carrying out their work to:

- i) the workmen of DMRC;
- ii) any other persons employed by the DMRC and their workmen; and
- iii) the workmen of any public authority who may be employed in the execution on or near the site of any work not included in this Concession Agreement, which DMRC may require.

4.12.17 Penalty Clause

- (i) If any infringement as defined under clause occurs, as determined by DMRC, DMRC will issue a notice to rectify the infringement within a stipulated time. If the infringement is not rectified within the stipulated time, a fine of upto Rs. 1 lac (Rs. One lac only) will be imposed by DMRC, allowing additional time for rectification of such infringement.
- (ii) If the infringement is not rectified inspite of the two opportunities given above, DMRC may at its discretion give a further opportunity for rectification or rectify the same and charge the cost from the developer.
- (iii) **Penalties:** The penalties will be imposed on violation of terms and conditions of agreement as per the list given below:

S. No.	Description of irregularities	Penalty
1.	Staff not in uniform/without ID card	Rs. 1,500.00
	Un-clean premises and improper housekeeping	
	Vehicles not parked in orderly manner	
	Charging of parking fee at the time of entrance	
	Fire fighting appliances not available in the parking	
	Vehicle checking appliances not provided	
2.	Use of unapproved parking slips	Rs. 3,000.00
	Mis behaviour by parking staff	
	Refusal of parking space to genuine metro commuters	
3.	Refusal to issue monthly passes	Rs. 5,000.00
	Obstruction of free movement to service room/station utilities	
4.	Over charging	5% of recurring payment
	Encroachment	
	Parking of commercial vehicles	
	On 3 rd occasion of irregularities given at S. No. 1 to 3	
5.	Use of parking space for other than parking purposes	10% of recurring payment
	Criminal activity in parking area	
6.	On 2 nd occasion of irregularities given at S. No. 5 or 3 rd occasion of irregularities given at Sl. No. 4	25% of recurring payment

7.	On 3 rd occasion of irregularities given at S. No. 5	50% of recurring payment
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The amount of penalty given above is tentative and may vary depending upon the magnitude of irregularity observed. After three violations, DMRC reserve the right to cancel the Concession Agreement and forfeit the Performance security & other amounts deposit in its favour; In case of any authorized representative of DMRC, the DMRC will have the right to terminate the agreement with immediate effect without any notice and forfeit the interest free security deposit in its favour.

- (iv) Penalty structure for shortfall in ECS to be levied by an officer of the level of GM(O) DMRC, in case of shortfall in performance standards of commuters parking

% of inspected ECS slots available in r/o commuters parking	Deemed % ECS shortfall in Parking facility vis-a vis the 90% performance target	Penalty if the condition is not rectified within 48 hours	Additional action
>or = 90%	0%	Nil	
85-89%	5%	Rs 5,000/ day	Equivalent car space will be provided as commuters parking by the concessionaire in his parking facility developed at site
80-84%	10%	Rs 10,000/ day	
75-79%	15%	Rs 15,000/ day	
70-74%	20%	Rs 25,000/ day	
<or=69%-64 %	Greater than 21%	Rs 50,000/ day	If this condition continue for more than 1 month then issue of notice for termination

ECS* - percentage ECS shortfall in parking facility

- (v) The construction work of this Integrated Parking cum Commercial Complex must begin on the ground within 6 months of the date of commencement. If the parking facility is not completed within 24 months along with handover of metro parking portion to DMRC, for the reasons attributable to the concessionaire penalty of Rs 10,000/- (Rupees Ten thousand only) per day will be levied. Delay of more than 6 month will be treated as "Concessionaire Event of Default". In such an eventuality DMRC retains the right to encash the performance security & claim damages from the concessionaire and even terminate the agreement as mentioned in Performance Security Clause.

ARTICLE 5

RIGHTS AND OBLIGATIONS

5.1 **The Concessionaire's Responsibilities and Duties** shall include the following, in addition to and without prejudice to other obligations under this Agreement:

- (a). to obtain due Permits, necessary approvals, clearances and sanctions from the competent authorities for building plans, infrastructure facilities including power, water supply, drainage & sewerage, fire fighting, telecommunication, etc.;
- (b). to comply and observe at all times with all Applicable Permits, approvals and Applicable Laws in the performance of its obligations under this Agreement including those being performed by any of its Contractors;
- (c). to furnish DMRC with the "As built" Drawings of the Project after completion of construction of the Project ;
- (d). to operate and maintain the Project Facility at all times in conformity with this Agreement;
- (e). to be responsible for safety, soundness and durability of the Project including other structures forming part thereof and their compliance with the local building byelaws;
- (f). to ensure that no structural damage is caused to the existing buildings and other permanent structures at the station as a result of his activities or any of its agents, contractors, tenants, etc.;
- (g). to ensure at all times that the said development in the Multi level parking with commercial development is neither an impediment for smooth flow of traffic nor a cause of inconvenience and safety hazard for the station structure and for commuters;
- (h). to take all reasonable steps to protect the environment (both on and off the Project Site) and to limit damage and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits;
- (i). to pay at its own cost all applicable existing and future taxes/charges/fees /property tax, stamp duty, registration charges and any other related Legal Documentation charges, if any, in respect of the said Project Facility, including land, as leviable, except for ground rent ;
- (j). to duly supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (k). to make reasonable efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of the Concessionaire's obligations under this Agreement;

- (l). to obtain and maintain in force all insurance in accordance with the provisions of this Agreement and Good Industry Practice and furnish copies of the same to DMRC;
- (m). to take all reasonable precautions for the prevention of accidents on or about the Project Facility and provide all reasonable assistance and emergency medical aid to accident victims;
- (n). not to permit any Contractor or other person, claiming through or under the Concessionaire, to create or place any encumbrance or security interest over all or any part of Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly permitted in this Agreement;
- (o). to ensure that such Site remains free from all encroachments, encumbrances and trespass during the entire Concession Period;
- (p). during execution of Works, to keep the Project Site free from all unnecessary obstruction, and store the Equipment or surplus materials dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Metro Station and Commuters or otherwise to DMRC's activities.
- (q). within 30 (thirty) days of achieving 'Completion' of the said development in the Site, to remove from the 'Site' all surplus construction machinery and materials, including, without limitation, hazardous materials and wastes, and keep the 'Site' in a neat and clean condition, and in conformity with the Applicable Laws; except that the Concessionaire shall be entitled to retain on any Project Site, until the expiry of the concession period, such equipment, materials and temporary works as required by it for the purpose of fulfilling its obligations under this Concession Agreement in respect of operation and maintenance of the Project.
- (r). on expiry of Concession Period, within a maximum period of 30 days, to leave the entire complex in a clean and safe condition to the satisfaction of DMRC. Provided that if the Concessionaire fails to clear, the Project Facilities and Site, DMRC may invoke the Performance Security, and get the complex cleaned at the cost of Concessionaire.
- (s). to provide all assistance to the independent consultant / expert / independent auditor / arbitrator as it may require for the performance of its duties and services;
- (t). at all times, to afford access to the Site to the authorised representatives of DMRC, Senior Lenders, other persons duly authorised by any Governmental Agency having jurisdiction over the Project, to inspect the Project and to investigate any matter within their authority and upon reasonable notice; and

(u). to comply with the divestment requirements and hand over the Project Facility to DMRC upon Termination of the Agreement;

5.2 The Concessionaire shall be solely and primarily responsible to DMRC for observance all the provisions of this Concession Agreement on behalf of the Concessionaire, its employees and representatives and further on behalf of the sub-licensees, their employees and agents and any person acting under or for and on behalf of the Concessionaire or the sub-licensees; the sub contractor as fully as if they were the acts or defaults of the Concessionaire, its agents or employees.

5.3 The Concessionaire shall be liable for and shall indemnify, protect, defend and hold harmless DMRC, DMRC's officers, employees and agents from and against any and all demands, claims, suits and causes of action and any and all liability, costs, expenses, settlements and judgements arising out of the failure of the Concessionaire to discharge its obligations under this clause and to comply with the provisions of Applicable laws and Applicable Permits.

5.4 The Concessionaire shall acknowledge and recognise that time is of the essence of this Agreement and that the performance of its obligations shall be construed accordingly.

5.5 **Assignability and Encumbrance**

5.5.1 Except for the sub-licensing the use of the built space, facility as per the terms of this Agreement, the Concessionaire shall not assign any of its rights, or interest in this Agreement in favour of any person(s) at any time and for any reasons whatsoever.

5.5.2 The Concessionaire may subject to the first and paramount charge of the DMRC over the receivables from the sub-licensees and other users of the built up space and facilities, for the payment of the amounts becoming due to DMRC, create second or further charge over the receivables as security to recognised Financial Institution(s) / Banks for financial assistance and funding of the Project.

5.5.3 Under no circumstance, shall the land or building or facilities constructed or installed at the Project Facility or Site be mortgaged, charged or otherwise any lien (including negative lien), charge or encumbrance be created or agreed to be created in favour of any person, including Lenders / Financial Institution(s) / Banks.

5.6 **Treasures/Fossils**

In the event of discovery by the Concessionaire or his employees during the progress of the work of any treasure, fossils, minerals or any articles of value or interest, the Concessionaire shall give immediate intimation of such treasure or things to the DMRC and the same shall become the property of the Government/ DMRC.

The concessionaire shall not claim right, title or interest on such things at any time.

ARTICLE 6
RESTRICTION ON CHANGES IN CONCESSIONAIRE AND SPECIAL PURPOSE
COMPANY

- 6.1 There shall be no change in the Concessionaire's shareholding structure that was submitted to DMRC at the time of bidding, till the Completion of the Project. If there are changes in the structure before completion, the Concessionaire must take prior approval of DMRC.
- 6.2 Without in any manner affecting the obligations of the Concessionaire to DMRC, the Concessionaire if comprises of a Consortium, may establish a Special Purpose Company to implement the Project. The Consortium members of the Concessionaire shall continue to be responsible and liable for due performance of all the obligations and responsibilities assumed by them under this Agreement.
- 6.3 The Relevant Members (i.e. at the time of bidding) of the 'Consortium' shall together maintain a minimum equity stake of 51% of the aggregate shareholding of the Special Purpose Company at all times. Any deviation from the above shareholding structure shall expressly be with the prior consent of DMRC. Further, any change in the equity shareholding pattern of the Special Purpose Company during the concession period resulting in change in management control shall be notified to DMRC and prior permission taken. All members of the Consortium shall be liable jointly and severally, for the execution of the Project in accordance with the terms of this Concession Agreement.

ARTICLE 7

INSURANCE

- 7.1 The Concessionaire shall, at its cost and expense, purchase and maintain during the concession period insurance to cover against :
- (a) Loss, damage or destruction of the Project Facility, at replacement value;
 - (b) The Concessionaire's general liability arising out of his agreement;
 - (c) Liability to third parties;
 - (d) The risks that may devolve on DMRC as a consequence of any act of negligence or omission by the Concessionaire; and
 - (e) Any other insurance that may be necessary under and in accordance with the Financing Documents, Applicable Laws to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable, and not otherwise covered in items above.
- 7.2 For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this Article 7 are herein referred to as the "Insurance Cover".
- 7.3 Evidence of Insurance Cover: The Concessionaire shall, from time to time, provide to DMRC copies of all insurance policies (or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts, renewals) obtained by him in accordance with this Agreement.
- 7.4 Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty five) days after written notice of such cancellation, change or termination has been given to DMRC in writing.
- 7.5 If at any point of time the Concessionaire fails to maintain in force and effect any / all of the insurances required under this Agreement, DMRC may, at its option, purchase and maintain such insurance and all sums incurred by DMRC therefore shall be reimbursed by the Concessionaire forthwith on demand, failing which the same shall be recovered by the DMRC by exercising right of set off or otherwise.

ARTICLE 8
ACCOUNTS AND AUDIT

- 8.1 The Concessionaire shall appoint and have during the subsistence of this Agreement as its 'Statutory Auditors' a firm of Chartered Accountants duly licensed to practice in India. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 8.2 The Concessionaire shall maintain full accounts of all inflows collected by it from the Project and of O&M Expenses and other costs.
- 8.3 Notwithstanding anything to the contrary contained in this Agreement, DMRC shall have the right, but not the obligation, to appoint at its cost, another firm of chartered accountants to independently audit ("Independent Auditor") and verify all matters, expenses, costs, realizations which have been carried out by the Statutory Auditors of the Concessionaire. In such an event, the concessionaire shall provide to such Independent Auditor access to all documents and records.
- 8.4 In the event of their being any difference between the finding of the Independent Auditor, as the case may be, and the certification provided by the Statutory Auditors of the Concessionaire, such Auditors shall meet to resolve such differences and if they are unable to resolve the same such disputed certification shall be resolved by recourse to the Dispute Resolution Procedure.

ARTICLE 9

FORCE MAJEURE

9.1 Force Majeure Event

Any of the following events resulting in material adverse effect shall constitute a Force Majeure Event :

- a. Earthquake, flood, inundation, landslide;
- b. Storm, tempest, hurricane, cyclone, lightning, thunder or other extreme atmospheric disturbances;
- c. Fire caused by reasons not attributable to the Concessionaire;
- d. Acts of terrorism; and
- e. War, hostilities (whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war;
- f. Strikes or boycotts, other than those involving the concessionaire, its contractors or their employees, agents, etc.; and
- g. Any other similar things beyond the control of the Party.

9.2 Notice of Force Majeure Event

As soon as practicable and in any case within 3 days of the date of occurrence of a Force Majeure Event or the date of knowledge thereof, the Party which is rendered wholly or partially unable to perform any of its obligations under this Agreement because of a Force Majeure Event ("the Affected Party") shall notify the other party of the same, setting out, inter alia, the following in reasonable detail:

- a. The nature and extent of the Force Majeure Event ;
- b. The estimated Force Majeure Period ;
- c. The nature of and the extent to which, performance of any of its obligations under this Agreement is affected by the Force Majeure Event ;
- d. The measures which the Affected Party has taken or proposes to take to alleviate/mitigate the impact of the Force Majeure Event and to resume performance of such of its obligations affected thereby ; and
- e. Any other relevant information concerning the Force Majeure Event, and /or the rights and obligations of the Parties under this Agreement.

9.3 Performance of Obligations

- 9.3.1 The Affected Party shall be excused from performance of such obligations to the extent it is unable to perform the same on account of such Force Majeure Event provided that:

- a. Due notice of the Force Majeure Event has been given to the other party as required by the preceding Article 9.2;
- b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. There shall be no Termination of this Agreement except as provided in Article 9.4;
- d. Where The Concessionaire is the Affected Party, the various deadlines set forth in this agreement and the Concession Period shall be extended by the period for which such Force Majeure Event shall subsist.
- e. Where The Concessionaire is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the Project Facilities as a result of the Force Majeure Event and to restore the Project Facilities, in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- f. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder, the non issue of such notice being no excuse for any delay for resuming such performance;
- g. The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- h. Any insurance proceeds received by The Concessionaire shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by DMRC.

9.4 Termination due to a Force Majeure event

If a Force Majeure Event subsists for a period of 180 (one hundred eighty) days or more within a continuous period of 365 (three hundred sixty five) days, either Party may in its sole discretion terminate this Agreement by giving 30 (thirty) days Termination Notice in writing to the other Party without being liable in any manner whatsoever.

ARTICLE 10

TERM AND TERMINATION

10. Term

10.1 It is the intention of the parties that this Agreement shall continue to operate and be binding on the Parties for the concession Period of 30 years from the Commencement Date, unless terminated earlier in accordance with the provisions of this Article 10.

10.2 Termination by DMRC

10.2 DMRC may terminate this Agreement due to any of the following events of default by the Concessionaire (hereinafter called the "**Concessionaire Event of Default**"):

- a. The Concessionaire has failed to perform or discharge any of its obligations in accordance with the provisions of this Agreement, unless such event has occurred because a Force Majeure Event, or due to reasons solely attributable to DMRC without any contributory factor of the Concessionaire;
- b. If at any time any payment, assessment, charge, lien, penalty or Damage herein specified to be paid by the Concessionaire to DMRC, or any part thereof, shall be in arrears and unpaid;
- c. Any representation made or warranties given by the Concessionaire under this Agreement is found to be false or misleading;
- d. The Concessionaire engaging or knowingly has allowed any of its employees, agents, sub-licensees, contractor or representative to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement;
- e. The Concessionaire has not started/completed construction of the Project Facility, in accordance with the time specified in Article 4 ;
- f. The Concessionaire has been adjudged as bankrupt or become insolvent.
- g. The Concessionaire has created any encumbrance, charges or lien in favour of any person or agency, over the Project Facility or the Site, save and except as otherwise expressly permitted under this Agreement ;
- h. A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- i. Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of DMRC, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed

entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;

- j. The Concessionaire has abandoned the Project Facility.

Provided that in the event of application of sub-clauses (a) and (b) above DMRC shall give to the Concessionaire 30 days time to cure the default prior to considering the events specified therein as Concessionaire's events of default and in the event the Concessionaire remedies the default to the satisfaction of the DMRC within the course period, the event will not be considered as a Concessionaire Event of Default.

10.3 Termination for Force Majeure

The Agreement may be terminated for Force Majeure reasons as specified in Article 9.4.

10.4 Consequences of Termination

10.4.1 Without prejudice to any other consequences or requirements under this Agreement or under any law, the following consequences shall follow upon expiry of the Concession Period by efflux of time or due to a Force Majeure Event or the Concessionaire Event of Default.

10.4.2 At the end of concession period, the Project site & the entire facility thereof shall transfer back to DMRC at nil value. DMRC at its own discretion may allow the sub-licensees / tenants / end users to continue on mutually negotiable terms & conditions.

10.4.3 Transfer of Assets : On the termination, the Concessionaire shall subject to the provisions of this Agreement :

- (a) Hand over/surrender vacant and peaceful possession of the entire Project Facility, free from all encumbrances, to DMRC free of cost ;
- (b) Transfer all its rights, titles and interest in or over the assets comprised in the Project which are required to be transferred to DMRC in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard ;
- (c) All Project Assets shall have been renewed and cured of all defects and deficiencies as necessary so that the Project is in accordance with the specifications & standards mutually decided upon;
- (d) Hand over to DMRC all documents including -built drawings, manuals and records relating to construction, operation and maintenance of the Project and a certificate from his statutory auditors stating zero financial encumbrance on the Project ;
- (e) At its cost remove from the Site all such moveable assets, which are not taken over by or transferred to the DMRC.

It is hereby agreed between the parties that the Concessionaire or the sub-licensee or any other person acting through or under them shall not remove any of the Project Facilities at Site including all equipment and other fixtures attached to the Project Facilities and shall remove only movables which can be removed without causing any damage to the structure.

- 10.4.4 Project Contracts: The Concessionaire shall transfer/assign such Project Contracts, which are (i) valid and subsisting, and (ii) capable of being transferred to DMRC. The Concessionaire shall entirely at its cost, terminate all such Project Contracts which are not transferred/assigned to the DMRC.
- 10.4.5 Applicable Permits: The Concessionaire shall, at its cost, transfer to DMRC all such Applicable Permits, which the DMRC may require and which can be legally transferred.
- 10.4.6 Both parties shall at least 6 (six) months prior to the expiry of the normal Concession Period of 30(thirty) years or sooner determination as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets, including the specifications & standards to be maintained as on the Transfer Date.
- 10.4.7 Each party shall pay the other party the various payments due as on the termination date in accordance with this agreement.
- 10.4.8 Upon the Concessionaire conforming to all Divestment Requirements and handing over the possession of the Project Facility to DMRC as per this Article 10.4, DMRC shall issue a "Vesting Certificate" which will have the effect of constituting evidence of divestment of all rights, title, interests and lien in the Project Facility by the Concessionaire and their vesting in DMRC pursuant hereto.
- 10.4.9 The Parties shall perform/discharge their respective obligations to be performed or discharged under the provisions of this Agreement on the termination in entirety, and unless otherwise provided in this Agreement, the cost involved in transfer contemplated shall be shared by the respective Parties.

10.5 Rights of DMRC on Termination

Notwithstanding anything contained in this Agreement, DMRC shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire in connection with the Project.

ARTICLE 11

DISPUTE RESOLUTION

11.1 Amicable Resolution

- 11.1.1 Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature between the Parties, howsoever arising under, out of or in relation to this Agreement (the "Dispute") shall in the first instance be attempted to be resolved amicably in accordance with the procedure set forth in the clauses below.
- 11.1.2 Either Party may require such Dispute to be referred to the Managing Director, DMRC and the Managing Director of the Concessionaire for the time being (in case of consortium the Managing Director of the Lead Member), for amicable settlement. Upon such reference, the two shall meet at the earliest mutual convenience and in any event within 15 days of such reference to discuss and attempt to amicably resolve the Dispute. If the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the two, either Party may refer the Dispute to arbitration in accordance with Article 11.2 below.

11.2 Arbitration

11.2.1 Procedure

Subject to the provisions of Clause 11.1, any Dispute, which is not resolved amicably, shall be referred to a panel of three (3) arbitrators in terms of the Arbitration & Conciliation Act, 1996. For this purpose DMRC will make out a panel of five (5) possible arbitrators. Each party shall nominate an arbitrator out of this panel submitted by DMRC and these two arbitrators will appoint the third arbitrator in writing and also inform the concerned parties about such appointment and call upon the other party to appoint its arbitrator. If within 15 days of receipt of such intimation the other party fails to appoint its arbitrator, the Party seeking appointment of arbitrator may take further steps in accordance with Arbitration & Conciliation Act, 1996. The arbitrator shall give item-wise and reasoned award. Where three (3) arbitrators have been appointed, the award of the majority will prevail.

11.2.2 Place of Arbitration

The place of arbitration shall be New Delhi.

11.2.3 English Language

The request for arbitration, the answer to the request, the terms of reference, any written submissions, any orders and awards shall be in English and, if oral hearings

take place, English shall be the language to be used in the hearings. The award shall be made in writing.

11.2.4 Enforcement of Award

The Parties agree that the decision or award, which shall be a speaking order, resulting from arbitration shall be final and binding upon the Parties and shall be enforceable in accordance with the Provision of the Arbitration and Conciliation Act, 1996 subject to the rights of the aggrieved parties to secure relief from any higher forum.

11.2.5 Performance during Arbitration

Pending the submission of and/or decision on a Dispute and until the arbitral award is published, the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

ARTICLE 12**REPRESENTATIONS AND WARRANTIES, DISCLAIMER****12.1 Representations and Warranties of The Concessionaire**

The Concessionaire (in the case of Consortium- each member) represents and warrants to DMRC that:

- a. It is duly organized, validly existing and in good standing under the laws of India;
- b. It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c. It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution, delivery and performance of this Agreement;
- d. It has the financial standing and capacity to undertake the Project;
- e. This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f. The execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire Memorandum and Articles of Association or any Applicable Law or any covenant, agreement, understanding, decree or order to which the Concessionaire is a party or by which Concessionaire or any of its properties or assets are bound or affected;
- g. There are no actions, suits, proceedings or investigations pending or to the Concessionaire's knowledge threatened against the Concessionaire at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may constitute the Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h. It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any government authority which may result in Material Adverse Effect;
- i. It has complied with all Applicable Law and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j. No representation or warranty by the Concessionaire contained herein or in any other document furnished by the Concessionaire to DMRC or to any government authority in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and

- k. The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that DMRC shall not be liable for the same in any manner whatsoever to The Concessionaire.
- l. The Concessionaire shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour are being recruited for and on behalf of DMRC. The Concessionaire shall at all times comply and represent to the staff and labour employed / engaged by them the requirement for complying with Applicable Laws and applicable Permits, particularly in relation to safety and environmental regulations.

12.2 Obligation to notify change

In the event that any of the representations or warranties made/given by the Concessionaire ceases to be true or stands changed, it shall promptly notify DMRC of the same.

ARTICLE 13

MISCELLANEOUS

13.1 Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at 15% per annum from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.

Provided the stipulation regarding interest for delayed payments contained in this Article 13.1 shall neither be deemed or construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

13.2 Governing Law and Jurisdiction

This Agreement shall be governed by the laws of India. The Courts at Delhi shall have exclusive jurisdiction over all matters arising out of or relating to this Agreement.

13.3 Waiver

13.3.1 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:

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

13.3.2 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 hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver/breach of any terms, conditions or provisions of this Agreement.

13.4 Survival

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

13.5 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding 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 agreed to by all the Parties hereto and evidenced in writing.

13.6 Notices

Unless otherwise stated, notices to be given under this Agreement including but not limited to a notice of waiver of any term, breach of any term of this Agreement and termination of this Agreement, shall be in writing and shall be given by hand delivery, recognized courier, mail or facsimile transmission and delivered or transmitted to the Parties at their respective addresses set forth below:

If to DMRC

The Managing Director
Delhi Metro Rail Corporation Ltd.,
Metro Bhawan, 13, Fire Brigade lane,
Barakhamba Road, New Delhi – 110 001
Fax No. -----

If to The Concessionaire

The Managing Director,
Address _____

Fax No. -----

Or such address, or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered (i) in the case of any communication made by letter, when delivered by hand, by recognized courier or by mail (registered, return receipt requested) at that address

and (ii) in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

13.7 Severability

If for any reason whatsoever 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 shall negotiate in good faith with a view to agreeing upon one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable. Provided failure to agree upon any such provisions shall not be subject to dispute resolution under this Agreement or otherwise.

13.8 No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership, association, or a joint venture between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever except as provided under this Agreement. DMRC is also not a principal employer in regard to the activities of the Concessionaire or the Sub-Licensee.

13.9 Language

All notices required to be given under this Agreement and all communications, documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

13.10 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 and any representation by any Party not contained in a binding legal agreement executed by the Parties.

13.11 Counterparts

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

13.12 Employees of Concessionaire

The employees/ staff of the Concessionaire shall not be deemed or construed to be the employees of the DMRC. The Concessionaire understands and undertakes that its employees/ staff shall make no claim against the DMRC for any reasons whatsoever. Further, the Concessionaire also agrees that the DMRC shall not be liable for any accident/ injury or claims of the workers/ employees during the execution of the developmental works under the present Agreement.

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

SIGNED SEALED AND DELIVERED

For and on behalf of DMRC by

For and on behalf of the Concessionaire by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

1)

1)

2)

2)

Schedule A
Plans/Drawings of The Site and Specified Area

(ATTACHED SEPERATELY)

SCHEDULE B**FORMAT FOR PERFORMANCE SECURITY**

(To be issued by a Scheduled Commercial Bank (except Regional Rural Bank & Local Area Bank in India, acceptable to DMRC, on non-judicial stamp paper of appropriate value)

BANK GUARANTEE NO. _____ dated _____

This Deed of Guarantee executed at _____ by _____ (Name of Bank) having its Head / Registered office at _____ (hereinafter referred to as “**the Guarantor**”) which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

In favour of

The **Delhi Metro Rail Corporation Limited** (hereinafter called “DMRC”), having its office at Metro Bhawan, 13, Fire Brigade lane, Barakhamba Road, New Delhi-110001, which expression shall unless it be repugnant to the subject or context thereof include its, successors and assigns;

WHEREAS:

1. DMRC intends to undertake the development of land parcel, with a total area of approximately _____ sq.m. adjacent to its _____ (Janakpuri (West)/ Uttam Nagar (E)/ Pitampura/ Kanhiya Nagar/ Kohat Enclave) Metro Railway Station Complex, on Concession basis (hereinafter referred to as the ‘Project’). This Concession is for a period of 30 (thirty) years from the date on which access to the site to undertake the Project is allowed by DMRC to the Concessionaire (Commencement Date). After the expiry of the Concession Period the property will revert to DMRC without any obligation on DMRC to pay or adjust any consideration or other payment to the Concessionaire. DMRC had invited proposals for selection of Concessionaire through its tender notice dated **2010**.
2. The bid submitted by the _____, having its registered office at _____ - has been accepted by DMRC.
3. As per the terms of the above-mentioned Concession Agreement, the Concessionaire is required to develop, procure, finance, construct, manage, maintain and license the use of the built up spaces and facilities in the Specified Area for purposes specified in the Concession Agreement for the duration of the Concession Period.
4. The Concessionaire is also required to make the payments to DMRC for the development rights at the said site,
 - 4.1 Upfront Fee of Rs. 1 (One crore) before the signing of the Concession Agreement.

- 4.2 Payment of charges for energy, water and other utility services to the extent provided by DMRC in the Project facilities.
5. The Concessionaire shall also:
- bear and pay all expenses, costs and charges incurred in the fulfilment of all its obligations under this Agreement ;and
 - not assign or create any lien or encumbrance on the Concession hereby granted or on the whole or any part of the Project Facility nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement.
6. The Concessionaire is required to furnish an unconditional irrevocable Bank Guarantee for an amount of Rs _____(_____) crore as security for the performance and fulfillment of all its responsibilities and obligations as per the Concession Agreement. The Concessionaire has requested the Guarantor to issue the said Bank Guarantee in favour of DMRC.
7. Now, therefore at the request of The Concessionaire, the Guarantor has agreed to execute this Guarantee in favour of DMRC for the due payment of Rs _____(_____) crore for the first year of the Concession.

NOW, THEREFORE, THIS BANK GUARANTEE WITNESSETH AS FOLLOWS:-

1. The Guarantor, as primary obligor shall, without demur, pay to DMRC an amount not exceeding Rs ____ (_____) crore, on the same working day of receipt of a written demand from DMRC, calling upon the Guarantor to pay the said amount and stating that the Performance Security provided by the Concessionaire has been forfeited.
2. The Guarantor agrees that DMRC shall be the sole judge to decide as to whether the Concessionaire has defaulted in the performance of its obligations as per the Concession Agreement, and the decision of DMRC in this regard shall be final and binding on the Guarantor, notwithstanding any differences in this regard between DMRC and the Concessionaire or any dispute pending before any Court, Tribunal Arbitrator or any other Authority.
3. Any such demand made on the Guarantor by DMRC shall be conclusive, absolute, final and binding on the Guarantor, and the amount due and payable by the Guarantor under this Guarantee will be honoured by the Guarantor, simply on demand, without demur, reservation, contest, protest, recourse whatsoever and without need for ascribing any reason to the demand. The liability of the Guarantor under this guarantee is absolute and unequivocal. The above payment shall be made without any reference to the Concessionaire or any other person.
4. This Guarantee shall be irrevocable, valid and remain in full force till the end of the Concession Period, or for such extended period as may be mutually agreed between

DMRC and the Concessionaire, and shall continue to be enforceable till all amounts under this Guarantee are paid. The said Guarantee shall be released by DMRC after the expiry of the Concession Period subject to fulfillment of all handover requirements by the Concessionaire, to the satisfaction of DMRC and further subject to adjustment for all damages suffered by DMRC.

5. This Guarantee is unconditional and irrevocable till such time DMRC discharges this guarantee by issuing a letter the Guarantor in this behalf.
6. The Guarantor undertakes to pay the amount mentioned herein as principal debtor and not a surety and it shall not be necessary for DMRC to proceed against the Concessionaire before proceeding against the Guarantor, notwithstanding the fact that DMRC may have obtained or obtains from the Concessionaire, any other security which at the time when proceedings are taken against the Guarantor hereunder, is outstanding and unrealised.
7. The obligations of the Guarantor shall not be affected by any variations in the terms and conditions of the Concession Agreement or other documents or by extension of time of performance of any obligations granted to the Concessionaire or postponement / non-exercise / delayed exercise of any of its rights by DMRC against the Concessionaire or any indulgence shown by DMRC to the Concessionaire, and, the Guarantor shall not be relieved from its obligations under this Bank Guarantee on account of any such variation, extension, postponement, non exercise, delayed exercise or omission on the part of DMRC or any indulgence by DMRC to the Concessionaire to give such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving the Guarantor.
8. The Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire / the Guarantor or any absorption, merger or amalgamation of the Concessionaire / the Guarantor with any other person.
9. The Courts at Delhi shall have exclusive jurisdiction to adjudicate on any or all matter arising under this Guarantee.
10. The Guarantor declares that it has power to issue this Guarantee and discharge the obligations contemplated herein and the undersigned is duly authorised to execute this Guarantee pursuant to the power granted under _____.

IN WITNESS WHEREOF THE GUARANTOR HAS EXECUTED THIS GUARANTEE ON THE DAY, MONTH AND YEAR FIRST ABOVE MENTIONED THROUGH ITS DULY AUTHORISED REPRESENTATIVE.

Signed and Delivered by _____ Bank

by the hand of Mr. _____,

its _____ and authorised official.

SCHEDULE C**(CONSORTIUM AGREEMENT/MEMORANDUM OF AGREEMENT)**

This Consortium Agreement/Memorandum of Agreement is executed at New Delhi on this ___ day of ___, 2010.

BETWEEN

M/s. _____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____ acting through its Managing Director, _____ duly authorized by a resolution of the Board of Directors dated ____ (hereinafter referred to as the 'LEAD MEMBER' which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the ONE Part;

AND

M/s. _____, a Company incorporated under the Companies Act, 1956 and having its Registered Office at _____ and Office at _____, acting through its Managing Director, _____, duly authorized by a resolution of the Board of Directors dated _____ (hereinafter referred to as the ('Participant member') which expression unless excluded by or repugnant to the subject or context be deemed to mean and include its successors in interest, legal representatives, administrators, nominees and assigns) of the OTHER PART',

Whereas Delhi Metro Rail Corporation Limited (hereinafter referred to as 'DMRC') has invited tenders for the "the Multi level parking with Commercial development at Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar" in terms of the RFP Document issued for the said purpose and the eligibility conditions required that the applicants bidding for the same should meet the conditions stipulated by DMRC for participating in the bid by the Consortium for handling the project for which the tender has been floated by DMRC.

AND WHEREAS in terms of the bid documents both the parties jointly satisfy the eligibility criteria laid down for a bidder for participating in the bid process by forming a Consortium between themselves.

AND WHEREAS both the parties hereto have discussed and agreed to form a Consortium for participating in the aforesaid bid and have decided to reduce the agreed terms to writing.

**NOW THIS CONSORTIUM AGREEMENT/MEMORANDUM OF AGREEMENT HEREBY
WITNESSTH:**

- A. That in the premises contained herein the Lead Member and the Participant Member having decided to pool their technical know-how, working experiences and financial resources, have formed themselves into a Consortium to participate in the tender process for “Multi level parking with Commercial development at Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar” in terms of the tender invited by Delhi Metro Rail Corporation Ltd., (DMRC).
- B. That the members of the Consortium have represented and assured each other that they shall abide by and be bound by the terms and conditions stipulated by DMRC for awarding the tender to the Consortium so that the Consortium may take up the aforesaid “Multi level parking with Commercial development at -----(Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar)” in case the Consortium turns out to be the successful bidder in the bid being invited by DMRC for the said purpose.
- C. That the members of the Consortium have satisfied themselves that by pooling their technical know-how and technical and financial resources, the Consortium fulfills the pre-qualification/eligibility criteria stipulated for a bidder, to participate in the bid for the said tender process for “Multi level parking with Commercial development at -----(Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar)”.
- D. That the Consortium have agreed to nominate any one of _____, _____ and _____ as the common representative who shall be authorized to represent the Consortium for all intents and purposes for dealing with the Government and for submitting the bid as well as doing all other acts and things necessary for submission of bid documents such as RFP Document , Mandatory Information, Financial Bid. etc., and such other documents as may be necessary for this purpose.
- E. That the share holding of the members of the Consortium for this specified purpose shall be as follows :-
- a. The Lead Member shall have _____per cent (____%) of share holding with reference to the Consortium for this specified project.
 - b. The Participant Member shall have _____ (____%) of share holding with reference to the Consortium for this specified project.
- F. That in order to fulfill the requirement of the tender process and also keep an altogether separate legal entity of the Consortium, the Members of the Consortium undertake to provide their own nominees as share holders to the extent of their respective share holding for the purpose of formation of a Special Purpose Company (SPC) through which the Consortium proposes to undertake the “Multi level parking with Commercial development at -----(Janakpuri (West)/ Rajouri Garden/ Pitampura/ Kanhiya Nagar).

- G. That if any change in the membership of the Consortium be required to be made by the members of the Consortium, the same shall be done with the consent of DMRC subject to the conditions as may be stipulated by them in this regard.
- H. That in case to meet the requirements of bid documents or any other stipulations of DMRC, it becomes necessary to execute and record any other documents amongst the members of the Consortium, they undertake to do the needful and to participate in the same for the purpose of the said project.
- I. That it is clarified by and between the members of the Consortium that execution to this Consortium Agreement/Memorandum of Agreement by the members of the Consortium does not constitute any type of partnership for the purposes of provisions of the Indian Partnership Act and that the members of the Consortium shall otherwise be free to carry on their independent business or commercial activities for their own respective benefits under their own respective names and styles. This Consortium Agreement is limited in its operation to the specified project.
- J. That the Members of the Consortium undertake to specify their respective roles and responsibilities for the purposes of implementation of this Consortium Agreement and the said project if awarded to the Consortium in the Memorandum & Articles of Association of the proposed Special Purpose Company to be got incorporated by the Consortium Members to meet the requirements and stipulations of DMRC.

IN FAITH AND TESTIMONY WHEREOF, THE PARTIES HERETO HAVE SIGNED THESE PRESENTS ON THE DATE, MONTHS AND YEAR FIRST ABOVE WRITTEN.

A1. Managing Director

(-----)

For (Name of company)

A2. Managing Director

(-----)

For (Name of company)

WITNESSES: 1. -----

2. -----

Enclosure:

- Board resolution of each of the consortium members authorising execution of the consortiums agreement and appointing the authorised signatory for such purpose.