



**दिल्ली मेट्रो रेल कॉर्पोरेशन लिमिटेड**  
**DELHI METRO RAIL CORPORATION LTD.**

**AIRPORT METRO EXPRESS LINE**

**CONCESSION CONTRACT NO. AMEL-P1**

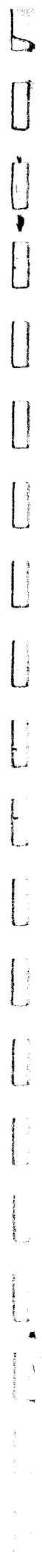
**DESIGN, INSTALLATION, COMMISSIONING, OPERATION AND  
MAINTENANCE OF AIRPORT METRO EXPRESS LINE  
NEW DELHI - INDIRA GANDHI INTERNATIONAL AIRPORT -  
DWARKA SEC. 21**

**PART I**

**CONCESSION AGREEMENT**

**Delhi Metro Rail Corporation Limited  
NBCC Place,  
Bhishma Pitamah Marg,  
Pragati Vihar,  
New Delhi -110 003  
India**

cpm/ctby



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### **PART I OF CONCESSION AGREEMENT**

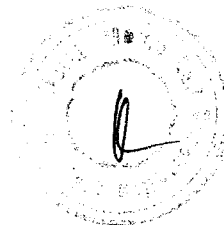
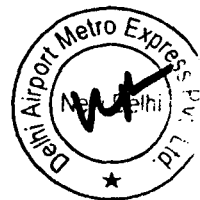
1. Concession Contract
2. Board resolution for signing of Concession Agreement/contract
3. Letter of Acceptance
4. Share purchase Agreement
5. Financial Proposal
6. Concession Agreement-Volume-II

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Concessionaire Agreement-Volume-III

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Contract Drawings



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10/10/10



दिल्ली DELHI

CONCESSION CONTRACT

F 442260

This Agreement is entered into on this the 25<sup>th</sup> day of August, 2008. BETWEEN

**DELHI METRO RAIL CORPORATION LIMITED**, a joint venture company of Govt. of India and Govt. of National Capital Territory of Delhi, and having its registered office at NBCC Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi 110 003 (hereinafter referred to as "DMRC" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of the One Part,

AND

**DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED**, a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at BSES Bhawan, Nehru Place, New Delhi – 110048, INDIA (hereinafter referred to as the "Concessionaire", promoted by Reliance Infrastructure Ltd, having its registered office at Reliance Energy Centre, Santa Cruz (E), Mumbai 400 055 and M/s. Construcciones y Auxiliar de Ferrocarriles, S.A. having registered office at Jose Miguel Iturriz, 26 – 20200 Beasain (Guipuzcoa) – SPAIN, which expression shall unless repugnant to the context or meaning thereof include its successors and permitted substitutes) of the Other Part.

#### RECITALS

Whereas

- A. Delhi Metro Rail Corporation Ltd. (DMRC), a joint venture of Govt. of India (GOI) and the Govt. of National Capital Territory of Delhi (GNCTD) is implementing Airport Metro Express Line Project (hereinafter referred to as "Project") in New Delhi, the Capital of India from New Delhi Railway Station to Dwarka Sector 21 via IGI Airport. The approximate length of the Project is 22.7 kilometer.

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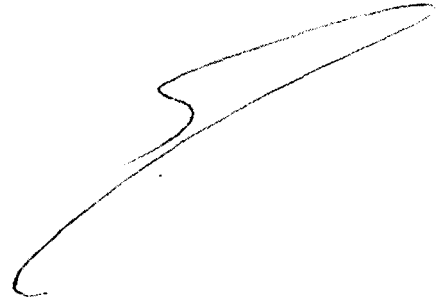
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Delhi Airport metro Express private Ltd  
BSES Bhawani  
Nehru place  
near delhi - 110048

25 AUG 2009

P. R. DHATTA  
A. No. 808  
Delhi Metro, N. Delhi

122287



- B. DMRC has decided to develop the Project by engaging Concessionaire for financing, design, procurement, installation of all systems (including but not limited to rolling stock, over head electrification, track, signaling and telecommunication, ventilation and air conditioning, automatic fare collection, baggage check-in and handling, depot and other facilities) and Architectural works/finishes as required for a successful Project. The Design and construction of basic civil structure for the Project shall be done by DMRC and same shall be made available to the Concessionaire progressively for design, supply, installation, commissioning & operation of system and related works.
- C. Following a process of prequalification by international Expression of Interest, DMRC Notice of Bid and after submission of RFP Documents by short listed bidders and evaluation thereof, DMRC has accepted the Bid of a consortium comprising Reliance Energy Limited (renamed as Reliance Infrastructure Limited vide certificate of incorporation no L99999MH1929PLC001530), and M/s. Construcciones y Auxiliar de Ferrocarriles, S.A (collectively the "Consortium") with Reliance Energy Limited (renamed as Reliance Infrastructure Limited vide certificate of incorporation no L99999MH1929PLC001530), as its Lead Member and has issued its Letter of Acceptance No DMRC/20/II-101/2006/Part-II dated January 21, 2008 ("LOA") accordingly requiring, inter-alia, the execution of this Concession Agreement within 60 (Sixty) days of the date thereof.
- D. The Consortium has since promoted and incorporated the Concessionaire as a limited liability Company under the Companies Act, 1956 and has requested DMRC to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the Consortium under LOA including the obligation to enter into this Concession Agreement.
- E. DMRC has accepted the request of the Consortium and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on BOT basis, subject to and on terms and conditions set forth hereinafter.
- F. It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement between the Parties.
- G. The following documents shall form the part of this Concession Contract:
- The LOA issued vide letter no DMRC/20/II-101/2006/Part-II dated January 21, 2008.
  - Concession agreement comprising of Section I to VIII (RFP-Volume II)
  - Schedules of Concessionaire agreement comprising of Schedule A to Schedule W (RFP- Volume III) including drawings, specifications etc. included and referred therein.
  - Financial Proposal comprising Appendix 12A and Appendix 12B of RFP-Volume I.

All of the foregoing documents, together with this Concession Contract are referred to herein as the Contract Documents. Also incorporated into these Contract Documents, and made part hereof, are all codes, standard specifications, and similar requirements that are referred to therein.

This agreement is signed between Mr. Mangu Singh, Director (Works) (for and on behalf of the "DMRC") and Mr. K.P. Maheshwari, Authorised Signatory of DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED (for and on behalf of the "Concessionaire"). The contract documents mentioned in recital G hereinbefore shall be signed by Mr. O.P. Singh, CPM (AP) (for and on behalf of

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the DMRC) and Mr. K. P. MAHESHWARI, Authorised Signatory, DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED (for and on "Concessionaire").

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

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

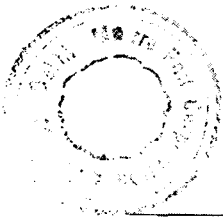
SIGNED, SEALED AND DELIVERED

For and on behalf of

**D M R C**

**(DELHI METRO RAILWAY CORPORATION LIMITED)**

By



*Mangu Singh*

(Mangu Singh)  
Director (Works)

SIGNED, SEALED AND DELIVERED

For and on behalf of

**CONCESSIONAIRE**

**(DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED)**

By



*K.P. Maheshwari*

**(K. P. MAHESHWARI)**  
Director

WITNESS

*Vishal Khetarpaul*

(VISHAL KHETARPAUL)  
MANAGER - INDIA

CONSTRUCCIONES Y AUXILIAR  
DE FERROCARRILES, S.A.

CAF

PADILLA, 17-6°  
28006 MADRID  
SPAIN.

WITNESS

*S.K. Gargi*

( S.K. GARGI )

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DMRC, 8- Jantar Man  
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1. <https://doi.org/10.1016/j.jmb.2019.04.008>

**Abstract**

Notes on the following pages of manuscript

**Abstract**

1

11. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

$$x^2 - 2x + 1 = (x-1)^2$$

# DELHI AIRPORT METRO EXPRESS PVT. LTD.

1st Floor, BSES Yamuna Power Ltd., Gandhi Market, Minto Road, New Delhi-110002  
Tel: +91 11 3999 9174 / 311/318/ 173

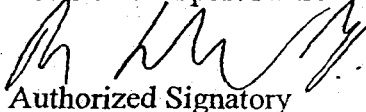
## Extracts of Minutes of the proceedings of the meeting of Board of Directors of the Company held on 20<sup>th</sup> June 2008

**"RESOLVED THAT** any one of S/Shri K. P. Maheshwari, or A. N. Sethuraman Directors of the Company being persons specifically authorized in this regard be and are is hereby authorized severally to sign, to execute, amend and deliver the Concession Agreement and such other agreements or documents which the company is required to enter into or execute with Delhi Metro Rail Corporation in connection with Delhi Airport Metro Project and in this regard to put the common seal of the Company, if required, be affixed to such agreement(s), documents etc in the presence of any of the aforesaid Directors in accordance with the provisions of Articles of Association of the Company on the said contracts, documents etc., and to make necessary corrections, additions, deletions, amendments, alterations, and modifications in the documents submitted to DMRC and/or the competent authorities concerned and

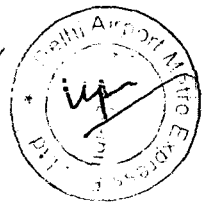
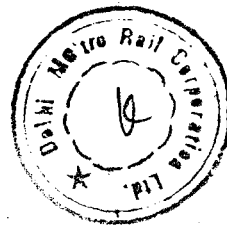
**RESOLVED FURTHER THAT** any one of S/Shri K. P. Maheshwari, A. N. Sethuraman Directors of the Company be and are hereby authorized severally to do all such acts, deeds, matters and things that may be necessary or incidental thereto for giving effect to this resolution and to take all necessary actions that may be required in this regard."

///Certified to be true\\

For Delhi Airport Metro Express Private Limited

  
Authorized Signatory

0000005







दिल्ली मेट्रो रेल कॉर्पोरेशन लि०  
**DELHI METRO RAIL CORPORATION LTD.**

(A JOINT VENTURE OF GOVERNMENT OF INDIA AND GOVT. OF DELHI)  
N.B.C.C. Place, Bhishma Pitamah Marg, Pragati Vihar, New Delhi-110003

Tel : 24365202/04

Fax : 24365370

No.DMRC/20/II-101/2006/ Part-II

January 21, 2008

**LETTER OF ACCEPTANCE**

To

M/s Reliance Energy Limited- CAF  
Reliance Energy Centre,  
Santa Cruz (East),  
Mumbai – 400 055  
INDIA.

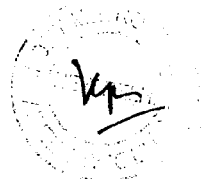
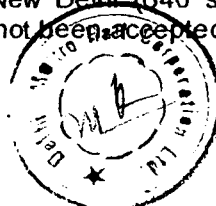
**Sub: Tender for Concessionaire for Design, Supply, Installation, Testing, Commissioning of all Systems and Operation & Maintenance of Airport Metro Express Line – AMEL P-1 Tender.**

- Ref:**
1. Your offer for the above captioned tender submitted on 12.10.2007.
  2. ALC letter No.ALC/AMEL-P1/707 dated 31.10.2007.
  3. Your letter dated 03.11.2007.
  4. ALC letter No.ALC/AMEL-P1/818 dated 22.11.2007.
  5. Your letter dated 05.12.2007.
  6. ALC letter No.ALC/AMEL-P1/868 dated 19.12.2007.
  7. Your letter dated 04.01.2008.
  8. ALC letter No.ALC/AMEL-P1/890 dated 15.01.2008.

Dear Sir,

1. We refer to your proposal dated 12.10.2007, in response to our Request for Proposal (RFP) document for the captioned Project.
2. We are pleased to inform you that your aforementioned proposal has been accepted and you are being issued this "Letter of Acceptance".
3. As per RFP document, you are required to form a Special Purpose Vehicle (SPV) before signing of the Concession Agreement. The details of Special Purpose Vehicle should be provided immediately on formation, along-with the registration certificate. The Special Purpose Vehicle formed by you shall comply with all the terms and conditions of the RFP document and of your subsequent proposal.
4. The Concession Fee to be paid by the Special Purpose Vehicle shall be as per your Financial bid incorporating Condition 1 of Appendix-12 B and thus for the first year of commercial operation an amount of INR 510,000,000/- (Rupees Five Hundred Ten Millions only) would be payable to Delhi Metro Rail Corporation. The Concession Fees would be enhanced for subsequent years and will be payable as per the provisions of Clause 8.2 of the Draft Concession Agreement, Volume II of the RFP document. Please note that condition no.2 mentioned by you in Appendix-12 B for retail area development rights at platform of New Delhi (640 sqm.) and Shivaji Stadium (320 sqm.) priced at INR 30 million has not been accepted by DMRC.

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5. The Annual Percentage Revenue Sharing will be as per Clause 8.3 of Concession Agreement, Volume II of the RFP document.
6. The Special Purpose Vehicle formed by you shall provide an unconditional and irrevocable Performance Security of INR 750 million (Rupees Seven Hundred Fifty Million) in the form of Bank Guarantee, in local currency, from an Indian Nationalized Bank or an Indian Scheduled Bank, having its branch at Delhi, before signing of Concession Agreement. The amount of Bank Guarantee, its periodic enhancements and tenure shall be as per Schedule F of the Draft Concession Agreement and Article 5 of the RFP document. The Performa of the Bank Guarantee shall be as per Schedule F of the Draft Concession Agreement. The Bank Guarantee shall be in the prescribed format.
7. The Special Purpose Vehicle formed by you shall sign the Concession Agreement with the Delhi Metro Rail Corporation, within a period of 60 days of receipt of this "Letter of Acceptance".
8. Please note that only your financial offer will become part of Agreement and the Business Plan or any other document submitted by you will not form part of Concession Agreement. Several negotiation / clarification meetings were conducted after the submission of bids. There has been exchange of information / correspondences during the above. The information / correspondences exchanged shall not become part of Concession Agreement except the following which shall form part of the agreement:

**(i) The track geometry at Dwarka Sector-21 and its financial implications**

The Track Geometry at Dwarka Sector-21 Station shall be as per the drawings supplied to the bidders along with the RFP.

**(ii) Additional retail space at concourse level of New Delhi Station and Shivaji Stadium Station**

In case the additional retail space is available to the concessionaire at concourse due to increase in the size of the station, the Concessionaire shall pay additional concession fee to DMRC on this account. The rate for this additional concession fee shall be on pro-rata basis as stated by the Concessionaire in Appendix-12 B condition no.2 (Rs. 30 million for 960 sqm. i.e. Rs.31250/- per sqm.). This additional concession fee shall be added to the concession fee of Rs. 510 million mentioned in para 4 above.

The enhancement applicable to the concession fee during subsequent years as per Clause 8.2 of Draft Concession Agreement, shall be on total concession fee including this additional concession fee.

**(iii) Cost of operation and maintenance of clearing house to be shared**

The cost of operation and maintenance of clearing house shall be shared by the concessionaire.

**(iv) Operation and maintenance of two 66 KV sub-stations and emergency arrangements for power between Airport Line & Central Secretariat-Badarpur line at Kendriya Bus Terminal, Church Street Sub-station**

The operation and maintenance of the two 66kv sub-stations shall be by concessionaire at their cost as per the bid requirements. You have further agreed to have a working arrangement for switching the power between

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Airport Line and Central Secretariat – Badarpur line in case of power failure in one line.

Also, the cable routes and High Voltage cables connecting the integrated sub-station to be constructed at the Airport, in place of that initially proposed at Palam Depot.

- (vi) You shall not recruit or attempt to recruit any DMRC Employee.
  - (vii) The arrangements for alternative power supply to Dwarka depot from Dwarka TSS shall be executed by you at your cost.
  - (viii) The temporary arrangements required for commissioning of Rolling stock at Palam Depot shall be made by you. DMRC will only arrange temporary land for this purpose. The rental charges for this temporary land shall be borne by you.
  - (ix) DMRC will arrange land for siding at Palam and you shall execute all works related to the siding.
9. This Letter of Acceptance is sent herewith to you in duplicate. You should return one copy of it duly signed by you on all pages indicating "Unconditional Acceptance" thereof so as to reach the undersigned within one week of issuance of this letter.
10. You are requested to contact Project Director, Airport Line Consultant, 8, Jantar Mantar Road, New Delhi – 110 001 for further necessary action in this matter and to start mobilization of resources for undertaking the work immediately.

Thanking you,

Yours faithfully

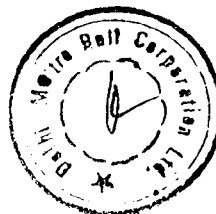
  
(Mangu Singh)  
Director (Works)

Encl: One copy of this letter in duplicate

N.O.O.

✓ Copy to: - Project Director, Airport Line Consultant, 8, Jantar Mantar Road, New Delhi-110001 – for kind information and further necessary action please.

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**SHARE PURCHASE AGREEMENT**

This Share Purchase Agreement ("**Agreement**") is made at New Delhi on this 30<sup>th</sup> day of June, 2008 to record the terms of purchase of equity shares

BY AND AMONGST

CONSTRUCCIONES Y AUXILIAR DE FERROCARRILES, S.A., a company duly incorporated and validly existing in Spain with its principal place of business at Calle Padilla, No. 17, Madrid, Spain, (hereinafter referred to as "**Purchaser**", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in business and permitted assigns) executed by Mr. Gonzalo Calleja Mateo authorised by a power of attorney dated 14 March, 2008 signed by Mr. Andres Arizcorreta Garcia, CEO of CAF;

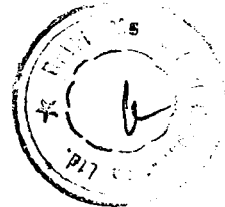
AND

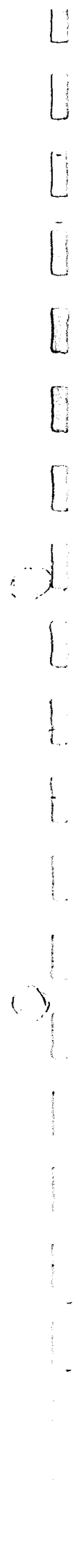
RELLANCE INFRASTRUCTURE LIMITED a company duly incorporated and validly existing in India with its principal place of business at Reliance Energy Center, Santa Cruz (East), Mumbai-55 (hereinafter referred to as "**Seller**" or "**RInfra**", which expressions shall unless repugnant to the context thereof be deemed to include their respective heirs, executors, successors, legal representatives and permitted assigns) executed by Mr. Ramesh Shenoy pursuant to a duly authorised board resolution passed by the board of directors of RInfra on 28 April, 2008;

AND

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DELHI AIRPORT METRO EXPRESS PRIVATE LIMITED, a company duly incorporated under the laws of India and having its office at BSES Bhawan, Nehru Place, New Delhi (hereinafter referred to as "*Company*", which expression shall, unless repugnant to the context or meaning thereof, be deemed to mean and include its successors in business and permitted assigns) executed by its director Mr. Krishna Prakash Maheshwari pursuant to a duly authorised board resolution passed by the board of directors of the Company on 20 June, 2008.

(The Purchaser and the Seller are herein collectively referred to as the "*Parties*" and individually as a "*Party*".)

(The respective instruments of authority of each of the Parties is placed as Schedule IV)

(The Company is only a consenting party to this Agreement).

**WHEREAS:**

- A. Delhi Metro Rail Corporation Ltd. ("DMRC"), a joint venture of Govt. of India ("GOI") and the Govt. of National Capital Territory of Delhi ("GNCTD") is engaged in the development of Metro System for Delhi and has been authorised by the Govt. of India to undertake development of Airport Metro Express line Project through BOT basis ("*Project*").
- B. Following a process of prequalification by international Expression of Interest, DMRC Notice of Bid and after submission of RFP Documents by short listed bidders and evaluation thereof, DMRC has accepted the Bid of a consortium comprising RInfra and the Purchaser, (collectively the "*Consortium*") with RInfra as its Lead Member and has issued the Letter of Acceptance ('LOA') thereto.
- C. RInfra has since promoted and incorporated the Company as a limited liability company under the Companies Act, 1956 and has requested DMRC to accept the Company as the

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Consortium under the LOA including the obligation to enter into a concession agreement ('Concession Agreement').

D. The current shareholding pattern of the Company is as follows:

Name of shareholder	Number of shares held in the Company	% shareholding
RInfra	9998	100
K P Maheswari	1	-
A N Sethuraman	1	-

E. The Seller now wishes to sell 5% shares in the Company and Purchaser has, upon the request of the Seller and relying on the mutual representations, covenants and warranties set out herein, has agreed to purchase the aforesaid shares from the Seller on the terms and conditions set forth herein;

NOW, THEREFORE IN CONSIDERATION OF THE PREMISES AND MUTUAL PROMISES AND COVENANTS SET FORTH HEREIN AND FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. DEFINITIONS & INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions (including in the recitals hereof or schedules hereto), unless the context otherwise requires, shall have the meanings ascribed to them in **Part A of Schedule I** annexed hereto.
- 1.2 In this Agreement, except where the context requires otherwise, the Agreement shall be interpreted in accordance with the principles set out in **Part B, of Schedule I** annexed hereto.

**2. PURCHASE OF SHARES FROM SELLER**

**2.1 Conditions Precedent for the sale of Shares**

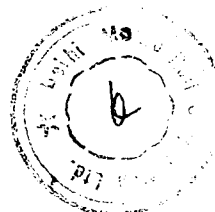
The following conditions must be satisfied by the Seller before the sale of shares to the Purchaser:

- (a) delivery of a legal opinion to the effect that the investment made by the Purchaser would be in accordance with the applicable laws of India;
- (b) compliance with the applicable regulations under the Foreign Exchange Management Act, 1999 including filing of Form FC-TRS with the authorised dealer.
- (c) the contracts for the supply and maintenance of the rolling stock which include (i) The Rolling Stock Supply Contract, (ii) The Rolling Stock Services Contract and (iii) The Fleet Maintenance Contract have been duly executed by both Parties in accordance with the extant law. For ease of reference, draft copies of these contracts are annexed to this agreement as Schedule III, Part A, Part B and Part C.

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## 2.2 Sale of Shares

On the terms, and subject to the conditions, set forth in this Agreement, the Seller agrees to sell, transfer and deliver to Purchaser for the Consideration, upon the satisfaction of the conditions precedent mentioned in clause 2.1, and Purchaser agrees to purchase from the Seller upon the satisfaction of the conditions precedent mentioned in clause 2.1, five hundred (500) shares of the Company aggregating to five percent (5%) of the paid-up share capital of the Company, free and clear of all Encumbrances in the manner as specified below:

Name of shareholder	Pre Completion Shareholding Pattern (No of Shares held)	Number of shares agreed to be transferred to the Purchaser	Post Completion Shareholding Pattern (No of Shares held)	Post Completion Shareholding Pattern (% Shareholding)
RInfra	9998	500	9498	95
CAF	NIL	Not applicable	500	5

## 2.2 Consideration

- 2.2.1 The consideration for the shares shall be paid at the rate of Rs. 10/- per share aggregating to INRs. 5000/- (Rupees Five Thousand only) ("**Consideration**") which shall be paid by the Purchaser to the Seller by wire transfer of immediately available funds to bank account designated in writing by the Seller. Pursuant to this clause, the amount of consideration that would become payable to the Seller would be as follows:

Name of shareholder	Number of shares to be transferred	Consideration per share	Total consideration
RInfra	500	10/-	5000/-

## 3. REPRESENTATIONS AND WARRANTIES

### 3.1 Seller's Representations and Warranties

The Seller hereby covenants to represent and warrant to the Purchaser that each of the representation and warranties set out in **Part A of Schedule II** hereto are true and correct ("**Seller's Representations and Warranties**") and acknowledge that the Purchaser is entering into this Agreement in reliance upon such representations and warranties.

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### 3.2 Company's Representations and Warranties

The Company hereby covenants to represent and warrant to the Purchaser that each of the representation and warranties set out in **Part B of Schedule II** hereto are true and correct ("*Company's Representations and Warranties*") and acknowledges that the Purchaser is entering into this Agreement in reliance upon such representations and warranties.

### 3.3 Purchaser's Representations and Warranties

The Purchaser hereby covenants to represent and warrant to the Seller that each of the representation and warranties set out in **Part C of Schedule II** are true and correct ("*Purchaser's Representations and Warranties*") and acknowledges that the Seller is entering into this Agreement in reliance upon such representations and warranties.

## 4. INDEMNIFICATION AND SURVIVAL

4.1 The Seller agrees to indemnify and hold the Purchaser and their shareholders, officers, directors, employees, agents, and successors, harmless from and against any damages, losses, liabilities, obligations, claims of any kind, interest, cost, fee, or expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "*Losses*"), suffered, incurred or paid, directly, through application of the Company's or Purchaser's assets or otherwise, as a result of, in connection with or arising out of:

- (a) failure of any representation or warranty made by the Seller or the Company in this Agreement (contained in Part A and Part B of **Schedule II**) to be true and correct in all respects as of the date of this Agreement;
- (b) breach of any Law or order of the Governmental Authority; or
- (c) breach of any of its obligations under this Agreement.

## 5. NOTICES

5.1 Any notice pursuant to this Agreement shall be in writing signed by (or by some person duly authorised by) the person giving it and may be served by leaving it or sending it by facsimile, prepaid recorded delivery (by air mail if overseas) or registered post addressed as follows (or to such other address as shall have been duly notified in accordance with this Clause):

### If to the Seller:

Fax : +91 22 30099763  
Attention : Mr. Ramesh Shenoy

### If to Purchaser

Fax : + (34) 91 4366006  
Attention : Mr GonZalo Calleja Mateo

### If to the Company

Attention : Mr. K.P. Maheshwari  
Fax : +91 11 39999173

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5.2 All notices given in accordance with this Article shall be deemed to have been served as follows:

- (a) if delivered by hand, at the time of delivery;
- (b) if posted, by air mail at the expiration of 6 (six) days after the envelope containing the same was delivered into the custody of the postal authorities; and
- (c) if communicated by facsimile, on receipt of confirmation of successful transmission.

5.3 All notices communicated by facsimile shall be followed by a copy thereof being sent by post to the notices.

## 6. GOVERNING LAW, DISPUTE RESOLUTION AND JURISDICTION

6.1 This Agreement shall be governed by, and construed in accordance with, the laws of India, without regard to the principles of conflicts to law of any other jurisdiction.

6.2 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act 1996.

6.3 The number of arbitrators shall be three. One arbitrator shall be appointed by the Purchaser and one shall be appointed by the Seller. The third arbitrator shall be appointed by the two arbitrators.

6.4 The seat of arbitration shall be at New Delhi and the proceedings of arbitration shall be in the English language. The arbitrators' award shall be substantiated in writing.

6.5 Each Party shall bear and pay its respective costs and expenses including professional fees and costs of its respective advisors and counsel.

6.6 The Parties agree to facilitate the arbitral tribunal by:

- (i) cooperating in good faith to expedite (to the maximum extent practicable) the conduct of the arbitration;
- (ii) making available to one another and to the arbitral tribunal for inspection and extraction all documents, books, records, and personnel under their control or under the control of a person controlling or controlled by such party if determined by the arbitral tribunal to be relevant to the dispute;
- (iii) conducting arbitration hearings to the greater extent possible on successive business days; and
- (iv) using their best efforts to observe the time periods established by the rules of the arbitral tribunal for the submission of evidence and briefs.

6.7 Any award made by the arbitral tribunal shall be final and binding on each of the Parties and shall be enforceable in any competent court of law.

6.8 For the purposes of this clause, the Parties agree that in the event that the process of the courts is required to be invoked for enforcement of clause 6, including for seeking of any interim relief prior, during or after invocation of clause 6, the competent courts at New Delhi shall have exclusive jurisdiction and both the Parties hereto submit to the same.

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## 7. MISCELLANEOUS

### 7.1 No Partnership or Agency

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties or constitute any Party the agent of any other Party for any purpose or entitle any Party to commit or bind any other Party in any manner or give rise to fiduciary duties by one Party in favour of any other.

### 7.2 Binding Effect

This Agreement is binding upon and shall inure to the benefit of the Parties. The Purchaser and Seller shall be entitled to seek specific performance of this Agreement.

### 7.3 Assignment

Neither this Agreement nor any right or obligation hereunder or part hereof may be assigned by any Party without the prior written consent of the other Parties (and any attempt to do so shall be void), and except that the Parties may, upon delivery of prior notice to the other Party, assign its rights or obligations to its Affiliate.

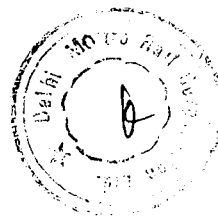
### 7.4 Severability

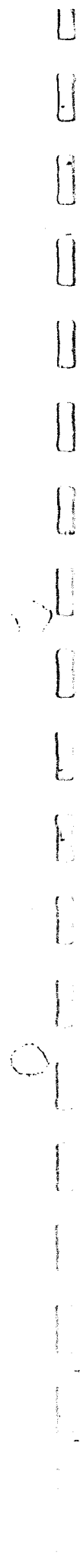
If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future Law, and if the rights or obligations under this Agreement of the Seller and the Purchaser shall not be materially and adversely affected thereby, (i) such provision shall be fully severable; (ii) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; (iii) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance here from; and (iv) in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid, and enforceable provision as similar in terms and effect to such illegal, invalid, or unenforceable provision as may be possible. However, if there is no automatic addition as aforesaid the Parties hereto shall mutually agree to provide a legal valid and enforceable provision as similar in terms and effect to such illegal, invalid or unenforceable provision as may be possible.

### 7.5 No Waiver

No forbearance, indulgence or relaxation or inaction by a Party at any time to require performance of any of the provisions of this Agreement shall in any way affect, diminish or prejudice the right of such Party to require performance of that provision. Any waiver or acquiescence by a Party of any breach of any of the provisions of this Agreement shall not be construed as a waiver or acquiescence of any right under or arising out of this Agreement or of the subsequent breach, or acquiescence to or recognition of rights other than as expressly stipulated in this Agreement.

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7.6 Entire Agreement

This Agreement supersedes all prior discussions and agreements between the Parties with respect to the transfer of the shares as set out in Clause 2.2, and this Agreement contains the sole and entire agreement between the Parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF THE PARTIES HERETO HAVE EXECUTED THESE PRESENTS ON THE DAY AND DATE FIRST HEREINABOVE SET OUT.

SIGNED AND DELIVERED BY THE SELLER

By: RAMESH SHENOY  
Title: SR. VP & COMPANY SECRETARY  
Date: 30th June 2008

*Muy*



SIGNED AND DELIVERED BY THE PURCHASER

By: GONALO CALEJA  
Title: TUNINGE YNDIGOR  
Date: 30th JUNE, 2008

*[Signature]*

SIGNED BY THE COMPANY

By: KAISHNA PRAKASH MAHESHWARI  
Title: DIRECTOR  
Date: 30th JUNE 2008

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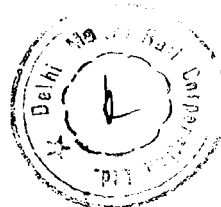
## SCHEDULE I

### Part A

#### **Definitions**

<b>"Act"</b>	means the Companies Act, 1956, as amended or modified from time to time including any re-enactment thereof.
<b>"Affiliate"</b>	means, with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with, such person provided that, for the purposes of this definition, Controlling, Controlled by and Control as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract or otherwise
<b>"Agreement"</b>	shall mean this Share Purchase Agreement and all attached Schedules and instruments supplemental to or amending, modifying or confirming this Agreement in accordance with the provisions of this Agreement.
<b>"Applicable Law"</b>	means the laws of India including but not limited to all enactments, rules, regulations, circulars and notifications passed by the Government of India or by any Government Authority which are applicable to the Company as also the transaction underlying this Agreement.
<b>"Government Authority"</b>	means any instrumentality, subdivision, court, tribunal, quasi-judicial body, administrative agency, commission, official or other authority in India.
<b>"Shares or Equity Shares"</b>	means a share in the share capital of the Company having a par value of Rs. 10/- per share.

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Handwritten signature and initials.

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## SCHEDULE I

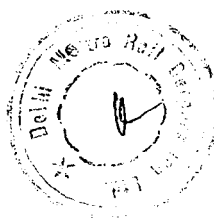
### Part B

#### Interpretations

Interpretations of this Agreement are as follows:

- (a) headings are for convenience only and shall not affect the construction or interpretation of any provision of this Agreement;
- (b) where a word or phrase is defined, other parts of speech and grammatical forms and the cognate variations of that word or phrase shall have corresponding meanings;
- (c) words importing the singular shall include plural and vice versa;
- (d) reference to Recitals, Clauses, Schedules and Annexures are to recitals, clauses, schedules and annexures of this Agreement;
- (e) all words (whether gender-specific or gender neutral) shall be deemed to include each of the masculine, feminine and neuter genders;
- (f) any reference in this Agreement to a statutory provision includes that provision and any regulation made in pursuance thereof, as from time to time modified or re-enacted, whether before or after the date of this Agreement;
- (g) the *ejusdem generis* (of the same kind) rule will not apply to the interpretation of this Agreement. Accordingly, *include* and *including* will be read without limitation;
- (h) the term *person* includes any individual, firm, corporation, partnership, company, trust, association, joint venture, government (or agency or political subdivision thereof) or other entity of any kind, whether or not having separate legal personality. A reference to any person in this Agreement shall, where the context permits, include such person's executors, administrators, legal representatives and permitted successors and assigns;
- (i) a reference to any document (including this Agreement) is to that document as amended, consolidated, supplemented, novated or replaced from time to time;
- (j) a reference to a statute or statutory provision includes, to the extent applicable at any relevant time:
  - (i) that statute or statutory provision as from time to time consolidated, modified, re-enacted or replaced by any other statute or statutory provision; and
  - (ii) any subordinate legislation or regulation made under the relevant statute or statutory provision;

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- (k) references to writing include any mode of reproducing words in a legible and non-transitory form; and
- (l) references to *Rupees*, *INR* and *Rs* are references to the lawful currency of India and the reference to *Rupees*.

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## SCHEDULE II

### Part A

#### SELLER'S REPRESENTATIONS AND WARRANTIES

In this Schedule, capitalised terms have the meanings set forth in the Agreement.

The Seller represents, warrants and agrees as follows:

#### 1. Ownership of Shares

The Seller is the lawful and absolute owner of all of the shares, free and clear of all encumbrances. Subsequent to the transfer and delivery of the shares pursuant to this Agreement from the Seller to the Purchaser, the Purchaser along with its Affiliates shall have a good, valid and marketable title to the capital of the Company free and clear of all encumbrances.

#### 2. Authority and Enforceability

The Seller has full legal capacity to execute, deliver and perform this Agreement and all other instruments and agreements to be executed and delivered by such Seller as contemplated hereby and to consummate the transactions contemplated under this Agreement.

#### 3. Consents and Approvals

3.1 The execution and delivery of this Agreement by the Seller and the consummation by the Seller of the transactions contemplated hereby will not result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under, or result in the creation of any encumbrance on any of the properties or assets of any of the Seller, the Company or its subsidiary under:

- (i) any provision of the organizational documents of the Company or its subsidiary; and
- (ii) any of the terms, conditions or provisions of any contract to which the Seller, the Company or its subsidiary is a party, or by which they or any of their respective properties or assets is bound.

#### 4. No Conflicts or Violations

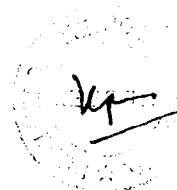
4.1 The execution and delivery of the Agreement by the Seller, the performance of the Seller of its obligations under the Agreement shall not:

- (a) violate any provision of any Applicable Law or any writ, judgment, decree, injunction, or similar order applicable to the Company;
- (b) conflict with or result in a violation or breach of, or constitute (with or without notice or lapse of time or both) a default under, any of the terms, conditions, or provisions of the Memorandum and Articles of Association of the Company; and
- (c) result in the creation or imposition of any Lien upon any of the Shares.

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## **SCHEDULE II**

### **Part B**

#### **COMPANY' REPRESENTATIONS AND WARRANTIES**

In this Schedule, capitalised terms have the meanings set forth in the Agreement.

The Company represent, warrant and agree as follows:

1. That the Company has been validly incorporated under the existing laws in India and has been regularly complying with the applicable laws in india;
2. That all the necessary corporate approvals that are required under the laws of India for the consummation of the transaction as contemplated under this Agreement have been validly complied with and the Company will register the Purchaser as its shareholder immediately upon the consummation of the transaction as contemplated under this Agreement.

## **SCHEDULE II**

### **Part C**

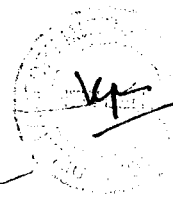
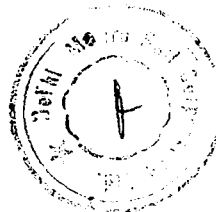
#### **PURCHASER'S REPRESENTATIONS AND WARRANTIES**

In this Schedule, capitalised terms have the meanings set forth in the Agreement.

The Purchaser represents, warrants and agrees as follows:

1. That it has been validly incorporated under the existing laws in Spain and has been regularly complying with the applicable laws in Spain;
2. The Purchasers have full legal capacity under extant Spanish law, to execute, deliver and perform this Agreement and all other instruments and agreements to be executed and delivered by them as contemplated hereby and to consummate the transactions contemplated under this Agreement.
3. The execution and delivery of this Agreement by the Purchaser and the consummation by the Purchaser of the transactions contemplated hereby will not result in a violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation, payment or acceleration) under:
  - (i) any provision of the organizational documents of the Purchaser; and
  - (ii) any of the terms, conditions or provisions of any contract to which the Purchaser is a party, or by which it or any of its respective properties or assets is bound.
4. The execution and delivery of the Agreement by the Purchaser and the performance of the Purchaser of its obligations under the Agreement shall not violate any provision of any Spanish Law.

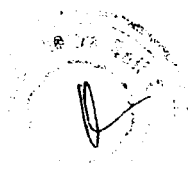
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# FINANCIAL PROPOSAL

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**RELIANCE Energy**  
Anil Dhirubhai Ambani Group

Date: 12<sup>th</sup> October 2007

**Reliance Energy Limited**  
Reliance Energy Centre,  
Santa Cruz (East)  
Mumbai - 400 055, India

Phone: +91 22 3009 9999  
Fax : +91 22 3009 9775

## APPENDIX 12

### FORM OF BID

**DESIGN, INSTALLATION, COMMISSIONING, OPERATION AND MAINTENANCE OF  
THE AIRPORTMETRO EXPRESS LINE BETWEEN NEW DELHI-INDIRA GANDHI  
INTERNATIONAL AIRPORT -DWARKA SECTOR 21)**

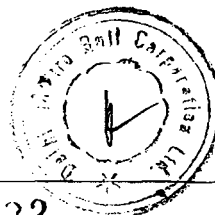
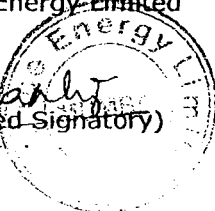
### FINANCIAL PROPOSAL

#### Appendix 12 A- FINANCIAL OFFER

1. We offer a Concession Fees of INR 540,000,000/- million Five Hundred and forty only for the First year after COD. *Shanly*
2. During the Concession period, the above Concession Fees shall be enhanced by 5% (Five percent) every year over and above the concession Fees of the previous year. *Shanly*
3. The offer mentioned is with conditions along with cost of withdrawal and such conditions are indicated in Appendix 12 B. *Shanly*
4. Details in support of the offer i.e. Business Plan is appended separately

For and on behalf of  
Reliance Energy Limited

*Shanly*  
(Authorized Signatory)



1. The first part of the document is a title page. It contains the title of the report, the author's name, and the date of the report. The title is "The Impact of Climate Change on the Environment". The author is "John Doe". The date is "January 1, 2023".



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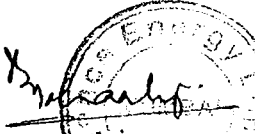
**RELIANCE Energy**  
Anil Dhirubhai Ambani Group

**APPENDIX 12 B**

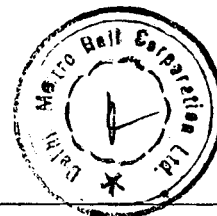
**PRICED CONDITION OF OFFER WITH COST OF WITHDRAWAL**

Bidders may submit here Qualifications/Conditions/Remarks/Assumptions to their offer along with the cost of withdrawal of each of them. The amount so indicated shall be reduced/ added to the concession fee quoted in Appendix 12 A.

Sr.	Qualifications/Conditions/Remarks/ Assumptions	Cost of withdrawal (Amt of adjustment in concession fees) (in figs & words)	
		ADD	SUBTRACT
1	Our proposal is based on the condition that Depot land of 7.3879 hectare is provided to the Concessionaire at Dwarka Sector 21 as shown in Tender drawings instead of depot land of 7.36 hectare at Palam.	NA	<del>Rs. 180,000,000/-</del> Rupees Eighteen Million Only. Rupees One Hundred and eighty million only.
2	Our proposal is based on the condition that Retail area development rights are available to the Concessionaire at Platform of New Delhi (640 sqr. mtr) and Shivaji Stadium (320 sqr mtr.) stations	NA	Rs. 30,000,000/- Rupees Thirty Million Only.

  
Authorised Signatory  
With Date and Stamp

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दिल्ली मेट्रो रेल कॉर्पोरेशन लिमिटेड  
DELHI METRO RAIL CORPORATION LTD.

AIRPORT METRO EXPRESS LINE

CONCESSION CONTRACT NO. AMEL-P1

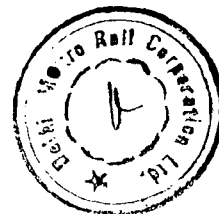
DESIGN, INSTALLATION, COMMISSIONING, OPERATION AND  
MAINTENANCE OF AIRPORT METRO EXPRESS LINE  
NEW DELHI - INDIRA GANDHI INTERNATIONAL AIRPORT - DWARKA SEC. 21

CONCESSION AGREEMENT

Volume II

Delhi Metro Rail Corporation Limited  
NBCC Place,  
Bhishma Pitamah Marg,  
Pragati Vihar,  
New Delhi -110 003  
India

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**DESIGN, INSTALLATION, COMMISSIONING, OPERATION AND MAINTENANCE OF  
AIRPORT METRO EXPRESS LINE - NEW DELHI - INDIRA GANDHI INTERNATIONAL AIRPORT-  
DWARKA SECTOR 21**

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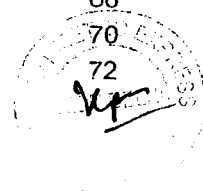
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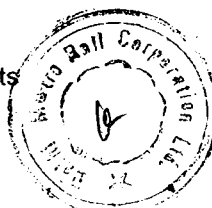
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**SECTION - I  
PRELIMINARY**

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**ARTICLE: 1**  
**DEFINITIONS AND INTERPRETATIONS**

**1.1 Definitions**

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed there to in the schedule:

"Accounting Year" means the financial year commencing from 1<sup>st</sup> day of April of any calendar year and ending on 31<sup>st</sup> day of March of the next calendar year.

"Additional Commercial Activity" shall have the meaning ascribed thereto in Sub-Article 7.1.7.

"Additional Facilities" means any facilities which the Concessionaire may provide or procure for the benefit of the users of the Project and which are (i) in addition to the Required Buildings and/or Project Systems, and (ii) not situated on the Site.

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

- a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded in Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of Appointed Date and the Reference Date;
- b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the "Base Adjusted Equity") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date;
- c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.42% (zero point four two per cent) (This number shall be substituted in each case by the product of 100 divided by the number of months comprising the Concession Period. For example, the figure for a 20 year Concession Period shall be  $100/240 = 0.416$  rounded off to two decimal points i.e. 0.42). thereof at the commencement of each month following the 4th (fourth) anniversary of the Project Completion Date and the amount so arrived at shall be revised to the extent of variation in WPI occurring between COD and the Reference Date; and the aforesaid shall apply, mutatis mutandis, to the Equity funded in Indian Rupees. For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Termination Date; provided that no reduction in the Base Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made;

"Affected Party" shall have the meaning set out in Sub-Article 26.1.

"Affiliate" in respect of a Person means any other Person that directly or indirectly, through one or more intermediaries, controlled, is controlled by or in common control with such first Person, where "control" means with respect to the relationship between or among two or more Persons, the possession directly or indirectly or as trusted, personal representative or executor, the power to direct or cause the direction of the affairs of management of a Person, whether through the ownership of voting rights, trustees, personal representative or executor by statute, contract, credit arrangement or otherwise, including the ownership, directly or indirectly of equity having the powers to elect a majority of the board of directors or similar body governing the affairs of such Person

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"Agreement" or Concession Agreement means this Agreement, its Recitals, the Schedules hereto, other annexure and amendments made thereto made in accordance with provisions contained in this Agreement.

"Airport Metro Express Line" or Project means the Express Metro Rail Line stretching from New Delhi Railway Station up to Dwarka Sector 21 via Indira Gandhi International Airport and shall include the Project Assets to be designed, engineered and built on Site and to be operated and maintained during the Concession Period in accordance with the provisions of this Agreement.

"Appointed Date" – means the date on which Financial Close is achieved or an earlier date in case that date is the date of commencement of Concession Period in terms of this Agreement.

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

"Applicable Permits" means all clearances, permits, authorisations, consents, no objection certificates, approvals and exemptions required to be obtained or maintained under

Applicable Laws in connection with the design, engineering, financing, procurement, construction, operation and maintenance of the Project during the subsistence of this Agreement.

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

"Arms Length Transaction" is defined as: A transaction in which the parties (a) are unconnected and have no overt common interest (b) are dealing from equal bargaining positions and (c) neither party is subject to other's control or dominant influence. Any such transaction is expected to reflect the true market value of the services provided and has been entered into with fairness, integrity and legality.'

"Associates" means in relation to either Party and/or Consortium Members, a person who controls, is controlled by, or is under the common control with such Party or Consortium Member. As used in this definition, the expression "control" means with respect to a person which is a corporation, the ownership, directly or indirectly, of more than 50% of the voting shares of such person, and with respect to a person which is not a corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise.

"Available Date" means the date upon which DMRC formally grants access to the Concessionaire of the first Section for the purposes of carrying out the Concessionaire's works as per Schedule "C" including installation of the Systems.

"Bank" means a bank incorporated in India and having minimum net worth of Rs. 1000 crore (Rupees one thousand crore) or any scheduled bank acceptable to Senior Lenders and DMRC but does not include a bank in which Senior Lenders have an interest.

"Bank Rate" – means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of section 40 of the Reserve Bank of India Act 1934 or any replacement of such Bank Rate for the time being in effect.

"Bid" means the documents in their entirety comprised in the bid submitted by the Bidder (Concessionaire/ Consortium) in response to the Tender Notice in accordance with the provisions thereof.



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"COD" means the commercial operations date of the Project after certification for safe operations by the Commissioner, Metro Rail Safety, pursuant to issue of the Completion Certificate or the Provisional Certificate by the Consultant upon completion of the Project in accordance with the Agreement.

"Change in Law" means the occurrence after date of the Bid of

- (i) the enactment of any new Indian law;
- (ii) the repeal, modification or re-enactment of any existing Indian law;
- (iii) the commencement of any Indian law which has not entered into effect until the date of the Bid;
- (vi) a change in the interpretation or application of any Indian law by a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of the Bid;

in such a manner that it has a material effect ( positive or negative) on

- the Project
- The Concessionaire,

It is expressly clarified that changes in the Indian Income Tax Act, 1961 with regards to the corporate tax on the income of the Concessionaire or a change in the manner of calculation of any tax of any type or any change in the rates of the any existing tax, duty cess etc for what so ever reason it may be, will not be considered as Change of Law.

"Change of Scope" shall have the meaning ascribed thereto in Sub-Article 18.1.

"Commercial Lease" means an agreement to rent all or part of the Site to a third party for a business purpose.

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

"Completion Certificate" means the certificate issued by the Consultant pursuant to Sub-Article 17.5.

"Concession" shall have the meaning ascribed thereto in Article 3.

"Concession Fee" shall have the meaning ascribed thereto in Article 8.

"Concession Period" means the period beginning from the Available Date and ending on the Termination Date.

"Concessionaire" means the company identified as such in the Preamble and its successors and permitted substitutes expressly approved in writing by DMRC.

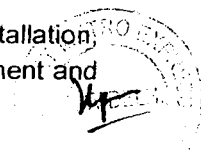
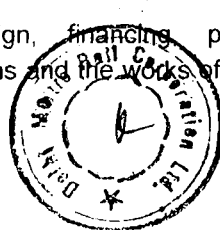
"Concessionaire's Capital Costs" means following:

- Prior to COD, the cost of the Concessionaire's Works as set forth in the Financing Documents plus any further additional capital cost for any Change of Scope instructed since the finalisation of the Financing Documents; and
- After COD, the actual capital cost of the Concessionaire's Works upon Project Completion as certified by the Statutory Auditors.

"Concessionaire's Notice of Additional Commercial Activity" shall have the meaning ascribed thereto in Sub-Article 7.1.7.

"Concessionaire's Works" means the design, financing, procurement, installation, commissioning and testing of the Project Systems and the works of design, procurement and

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construction necessary to complete the Required Buildings for the safe and reliable commercial operation of the Project (Schedule C).

"Consortium" shall have the meaning set forth in Recital above.

"Consortium Member" means a company identified in Recital as forming part of the Consortium.

"Construction Period" means the period beginning from the Available Date and ending on the COD.

"Consultant" means the Consultant appointed by DMRC as its General Consultant (GC) or any other Consultant appointed by DMRC during construction and/or operation period of the Project.

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

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

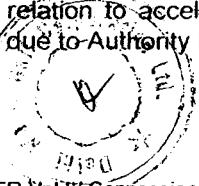
- a) Commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice.
- b) Not relieve any Party from liability to pay Damages or compensation under the provisions of the Agreement; and
- c) not in any way be extended by any period of Suspension under this Agreement

provided that if the cure of any breach by the Concessionaire requires any reasonable action by DMRC or Consultant hereunder, the applicable Cure period shall be extended by the period taken by DMRC or the Consultant to accord their approval

"Damages" shall have the meaning ascribed thereto in Sub-Article 1.2(o).

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

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



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

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

"Depreciated Value" – means the value of an asset as depreciated annually in the books of account of the Concessionaire in accordance with the provisions of the Applicable Laws.

"Design" means the detailed design and drawings (of any kind) and technical specifications prepared by the Concessionaire to describe the Concessionaire's Works, and which shall be developed from, and in accordance with, the Drawings provided in Schedule 'I' and the Specifications for the Concessionaire's Works provided in Schedule 'D'.

"Development Period" means the period from the date of issue of Letter of Acceptance until the Available Date.

"Disclosed Data" means any information or data and documents made available or issued to the Concessionaire in connection with the Project by or on behalf of DMRC whether before or after the execution of this Agreement.

"Dispute" shall have the meaning set forth in Sub-Article 36.1(a).

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

"Divestment Requirements" means the obligations of the Concessionaire for and in respect of the Termination of this Agreement as set forth in Article 30.

"DMRC Delay" shall have the meaning ascribed thereto in Sub-Article 13.9.

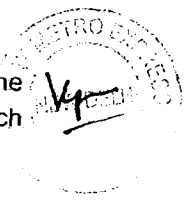
"DMRC Representative" means such person or persons as may be authorised in writing by DMRC to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfill any obligations of DMRC under this Agreement.

"DMRC Works" means the civil works of tunnels, viaducts and at-grade track bed, stations structures and the like as described in Schedule 'B' to be procured by DMRC and handed over to the Concessionaire as Sections in accordance with the handover milestones shown in Schedule 'H'.

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

"Effective Date" means the date on which Financial Close is achieved.

"Emergency" means a condition or situation that is likely to endanger the security of the individuals on or about the Airport Metro Express Line, including users thereof, or which poses an immediate threat of material damage to any of the Project Assets.



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"Encumbrances" means in relation to the Project any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations and shall include without limitation any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Airport Metro Express Line, physical encumbrances and encroachments on the Site where applicable herein.

"EPC Contract" means a contract entered into by the Concessionaire for any part of the design, engineering, procurement of materials and equipment, installation, and completion of the Required Buildings and Project Systems.

"Equity" means the sum expressed in Indian Rupees representing the equity share capital of the Concessionaire and shall include the funds advanced by any Member of the Consortium or by any of its shareholders to the Concessionaire for meeting the equity component of the Concessionaire's Capital Costs.

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

"Escrow Agreement" shall have the meaning ascribed thereto in Sub-Article 23.2.

"Escrow Bank" means the Bank holding and administering the Escrow Account.

"Fare" means the charge levied on and payable by a passenger for carriage using the Airport Metro Express Line in accordance as prescribed in this Agreement.

"Fare Notification" means the initial notification as provided in this Concession Agreement in respect of the levy and collection of the Fares along with the formula for future changes in the Fare as prescribed in this Agreement.

"Financial Close" means the date on which the Financing Documents providing for funding by the Senior Lenders have become effective and the Concessionaire has access to such funding under the Financing Documents within 30 days of such date.

"Financing Documents" means the documents executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by any means (including *inter alia* loans, guarantees, subscription to non-convertible debentures and other debt instruments) and security agreements, and other documents relating to the financing (including refinancing) of the Project and including any amendments or modifications made to such documents subject to the provisions of Sub-Article 10.1(d).

"Financial Model" means the Financial Model adopted by Senior Lenders, setting forth the capital and operating cost of the Project and revenue therefrom on the basis of which the financial viability of the Project has been determined by the Senior Lenders and includes a description of assumptions and parameters for making calculations and Projections therein.



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"Financing Package" or "Financial Proposal" means the financing package of the Project furnished by the Concessionaire along with its Bid indicating the Concessionaire's capital costs and the sources of financing thereof, and shall be deemed to have been modified to the extent as submitted to the Senior Lenders and as approved by the Senior Lenders for the purposes of funding of the Project.

"Force Majeure" or "Force Majeure Event" shall mean an act, event, condition or occurrence specified in Article 26.

"GOI" means the Government of India.

"GNCTD" means the Government of the National Capital Territory of Delhi.

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

"Gross Revenue" means the sum total of all revenues (Fare and Non Fare) received by the Concessionaire every year during the Concession Period.

"Handover Package" means the assemblage of information provided by the Concessionaire in accordance with Sub-Article 30.3 and containing the information called for in Schedule 'T'.

"Indemnified Party" and "Indemnifying Party" mean the Party entitled to be indemnified by the other Party (or Indemnifying other Party) pursuant to Article 35.

"Independent Assessor" means a company engaged and paid by the Concessionaire to perform a safety inspection and verification of one or more of the Project Systems to satisfy the requirements of the Commissioner of Metro Rail Safety pursuant to obtaining his clearance for the Project to be put into commercial operation.

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

"Inspection Report" shall have the meaning ascribed thereto in Sub-Article 15.3.

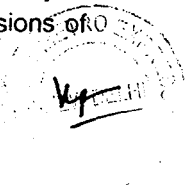
"Lead Member" means the company identified as such in Recital

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

"Maintenance Programme" shall have the meaning ascribed to it in Sub-Article 19.3.

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

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"Material Breach" means a breach by either Party of any of its obligations in this Agreement which shall be deemed to have a Material Adverse Effect on the Project and which it shall have failed to cure within the Cure Period.

"Net Cash Flow" means in any Accounting Year revenue income less tax payments, O&M Expense, Concession Fee, Negative Grant and Debt Service Payments to Senior Lenders.

"Non-Fare Revenue" means income of any type generated by the Concessionaire from the use of the Project Assets in any way except income from Fares.

"O&M" means the operation and maintenance of the Project during the Operations Period and includes, all matters connected with or incidental to operations and maintenance, provision of services and facilities and collection of Fare and other revenues in accordance with provisions of this Agreement.

"O&M Contract" means a contract that may be entered into between the Concessionaire and an O&M Contractor for the performance of all or part of the O&M obligations.

"O&M Contractor" means the person or entity if any, with whom the Concessionaire has entered into an O&M Contract for full or partial O&M obligations for and on behalf of the Concessionaire.

"O&M Expense" means expenses incurred by or on behalf of the Concessionaire duly certified by its Statutory Auditors or by DMRC, as the case may be, for all regularly scheduled and reasonably anticipated O&M during Operations Period, including, without limitation

- (a) cost of salaries and other employee compensation and contract fee payable to the O&M Contractor, if any
- (b) cost of materials, supplies, utilities and other services
- (c) premia for insurance
- (d) all taxes, duties, cess and fees of any type due and payable for O&M obligations
- (e) all repair, replacement, reconstruction, improvement and maintenance cost, and
- (f) all other expenditures required to be incurred under Applicable Law, Applicable Permits or this Agreement.

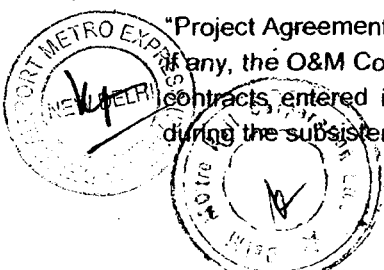
"Operations and Maintenance Manual" shall have the meaning ascribed to it in Sub-Article 19.2.

"Operations Period" means the period commencing from COD and ending on the Termination Date.

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

"Performance Security" shall have the meaning as set forth in Sub-Article 5.1

"Project Agreements" means this Agreement, the Financing Documents, the EPC Contract(s), if any, the O&M Contract(s), if any, a Commercial Lease, if any, and any other agreements or contracts entered into by the Concessionaire with DMRC or others relating to the Project during the subsistence of this Agreement.



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"Project Assets" means all physical and other assets relating to and forming part of the Site including:

- (i) rights over the Site in the form of license, right of way, property development rights, or otherwise,
- (ii) the DMRC Works as described in Schedule B,
- (iii) the Concessionaire's Works as described in Schedule C,
- (iv) the rights of the Concessionaire under the Project Agreements,
- (v) financial assets, such as receivable, security deposits, security etc.
- (vi) insurance proceeds, and
- (vii) Applicable Permits and authorisations relating to or in respect to Project, but does not include Additional Facilities.

"Project Completion" shall have the meaning ascribed thereto in Sub-Article 16.1.

"Project Completion Schedule" means the progressive Project milestone set forth in Schedule 'H' for the realisation of the Project complete in all respects by the Scheduled Project Completion Date.

"Project Systems" means the systems to be engineered, procured, installed, commissioned and tested by the Concessionaire as required for the operation of the Project, including (but not limited to) rolling stock, traction, track, signaling, telecommunications, tunnel ventilation, station ventilation and climate control, automatic fare collection, baggage check-in and handling, and flight information systems, and their maintenance facilities, all as described in Schedule 'C'.

"Provisional Certificate" means the certificate pursuant to Sub-Article 17.6.

"Punch List" shall have the meaning ascribed to it in Sub-Article 17.6.

"Required Buildings" means the depot, operations control centre, stations, electrical substations, tunnel ventilation buildings, etc. required to house Project Systems or otherwise required for the safe and reliable operation of the Project.

"Rs." Or "Rupees" means the lawful currency of the Republic of India.

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

"Scheduled Project Completion Date" shall have the meaning set forth in Sub-Article 16.3.

"Section" means a completed portion of DMRC Works, including tunnel, viaduct, and at-grade lengths of track bed, or station structure.

"Senior Lenders" means the financial institutions, banks, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Documents for meeting costs of all or any part of the Concessionaire's Works and who hold pari passu charge on assets, rights, title and interest of the Concessionaire.

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"Site" means the real estate licensed by DMRC to the Concessionaire under and in accordance with this Agreement on which the Project is situated and which shall be handed over, together with relevant DMRC Works thereon, to the Concessionaire by Sections in accordance with the milestones given in Schedule 'H'.

"Specification and Standards" means the specifications and standards relating to the quality, capacity and other requirements for the Project as set forth in Schedule 'D' and any modifications thereof, or additions as included in the design and engineering for the Project submitted by Concessionaire and approved by DMRC.

"Start Date" shall have the meaning ascribed to it in Sub-Article 14.1 (a).

"Statutory Auditors" means an independent and reputable firm of Chartered Accountants duly licensed to practice in India acting as the Statutory Auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment or replacement thereof, for the time being in force, and appointed in accordance with Sub-Article 25.2.

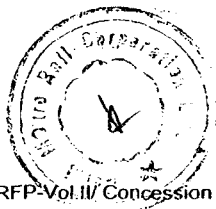
"Subordinated Debt" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the date of termination:

- a) the principal amount of debt provided by lenders or the Concessionaire for meeting the Concessionaire's Capital Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Termination Date.

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

"Substitution Agreement" means the agreement referred to in Article 29 and to be entered into among the Concessionaire, DMRC and the Senior Lenders in the form set forth in Schedule 'U' providing, inter alia, for the substitution of the Concessionaire by any other person including DMRC subject to and in accordance with the provisions of this Agreement and the Substitution Agreement.

"Taxes" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central or local) charged, levied or imposed on the goods, materials, equipment and services incorporated in and forming part of the Project, or on the construction, operation and maintenance thereof or on the Project Assets, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever



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"Termination" means the expiry with normal efflux of time or termination of this Agreement and the Concession hereunder due to Concessionaire Event of Default, DMRC Event of Default or for the Convenience of DMRC.

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

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

"Termination Payment" means the amounts payable by DMRC to the Concessionaire under this Agreement upon the Termination of this Agreement. For the avoidance of doubt it is expressly agreed that the amount payable shall be subject to the limitations specified in this Agreement

"Tests" mean the tests to be carried out as set forth in and in accordance with Schedule 'J' to determine the Project Completion and/or the reliability of the Project Systems.

"Total Revenues" means the sum of Fares received and Non-Fare Revenues earned (whether paid or not) during a period.

"User" means a person who uses the Project line or any part of the Project on payment of the Fare

"Vesting Certificate" shall have the meaning attributed to it in Sub-Article 31.5.

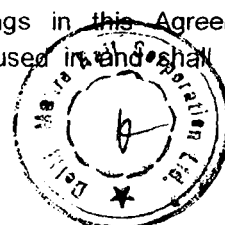
"WPI" means the wholesale price index published by the Ministry of Industry, GOI and shall include any index, which substitutes the WPI and any reference to the WPI, shall unless the context otherwise requires be construed as a reference to the WPI published for the period ending with the preceding month.

## 1.2 Interpretation:

In this Agreement, unless the context otherwise requires,

- (a) any reference to a statutory provision shall include such provision as is from time to time modified or re-enacted or consolidated so far as such modification or re-enactment or consolidation applies or is capable of applying to any transactions entered into hereunder;
- (b) references to Indian law shall include the laws, acts, ordinances, rules, regulations, or bye laws which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or reenacted ;
- (c) the words importing singular shall include plural and vice versa, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal entity) and shall include successors and assigns;
- (d) the table of contents, headings and subheadings in this Agreement are for convenience of reference only and shall not be used in and shall not affect the construction or interpretation of this Agreement;

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*[Handwritten signature]*

- (e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
- (f) references to "construction" includes, unless the context otherwise requires, investigation, design, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction;
- (g) any reference to time shall mean a reference to Indian Standard Time ;
- (h) any reference to day shall mean a reference to a calendar day,;
- (i) any reference to month shall mean a reference to a calendar month
- (j) Any reference to Lakh means hundred thousand (100,000) and crore means ten million (10,000,000);
- (k) the Schedules to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (l) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference provided that this Article shall not operate so as to increase liabilities or obligations of DMRC hereunder or pursuant hereto in any manner whatsoever;
- (m) references to Recitals, Articles, , Sub-Articles, Paragraphs, or Schedules in this Agreement shall, except where the context otherwise requires, be deemed to be references to Recitals, Articles, Articles, Sub-Articles, paragraphs, and Schedules of or to this Agreement;
- (n) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Consultant shall be valid and effectual only if it is in writing under the hands of duly authorised representative of such Party or the Consultant, as the case may be, in this behalf and not otherwise
- (o) the damages payable by either Party to the other of them as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty or liquidated damages (the "Damages");
- (p) unless otherwise expressly provided in this Agreement any Documentation required to be provided or furnished by the Concessionaire to DMRC and/or the Consultant shall be provided free of cost and in three copies and if DMRC and/or the Consultant are required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- (q) any word or expression used in this Agreement shall unless otherwise defined or construed in this Agreement bear its ordinary English meaning and for these purposes , the General Articles Act, 1897 shall not apply.



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### 1.3 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.

### 1.4 Priority of contract documents and errors/discrepancies

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

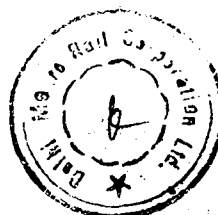
- (i) This Agreement; and
- (ii) All other agreements and documents forming part thereof;

i.e. the Agreement at 1.4 (i) shall prevail over the agreements and documents at 1.4(ii) above.

#### 1.4.1 Subject to 1.4 above in case of ambiguities or discrepancies within this Agreement, the following shall apply:

- (i) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail;
- (ii) between the articles of this Agreement and the Schedules, the Articles shall prevail;
- (iii) between Schedules and Annexures, the Schedules shall prevail;
- (iv) between the written description on the Drawings / Specifications and Standards, the latter shall prevail;
- (v) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail;
- (vi) Between any value written in numerals and that in words, the latter shall prevail.

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**ARTICLE 2**  
**SCOPE**

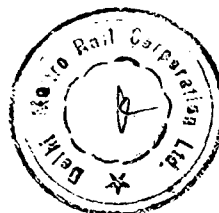
- i) The Project shall be executed on the Site, which is described in Schedule 'A' of this Agreement.
- ii) The scope of the Project shall include performance and execution by DMRC of all design, engineering, financing, procurement, construction, and testing of the civil works to the limits identified in Schedule 'B' and performance and execution by the Concessionaire of all design, engineering, financing, procurement, construction completion, installation, commissioning and testing of the Concessionaire's Works shall be done as described in Schedule 'C' of this Agreement, together with the subsequent operation and maintenance of the entire Project. The Scope shall also include the creation of additional infrastructure and Project System to augment the AMEL System during the Concession Period, to meet the passenger carrying capacity demanded.
- iii) The Concessionaire shall execute the Concessionaire's Works in accordance with the Specifications and Standards set forth in Schedule 'D', and shall operate and maintain the Project in accordance with Schedule "L".
- iv) The Scope of the Project shall also include performance and fulfillment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all obligations of the Concessionaire under the Agreement.



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**SECTION - II  
THE CONCESSION**

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### ARTICLE 3 GRANT AND ACCEPTANCE OF CONCESSION

- 3.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, DMRC hereby grants to the Concessionaire and the Concessionaire hereby accepts the Concession for a period of 30 (thirty) years commencing from the Available Date, including the exclusive right, license and authority during the subsistence of this Agreement to implement the Project and the Concession in respect of the Airport Metro Express Line.
- 3.2 Subject to and in accordance with the provisions this Agreement, the Applicable Laws and the Applicable Permits, DMRC hereby grants to the Concessionaire, the Concession set forth herein including the exclusive right, license and authority during the subsistence of the Agreement to :
- (a) Right of Way, access and license to the Site for the purpose of and to the extent conferred under the Agreement
  - (b) to develop, design, engineer, finance, procure, construct, commission and test the Concessionaire's Work during the Construction Period;
  - (c) upon completion of the Airport Metro Express Line, manage, operate & maintain the Project as a commercial enterprise for providing the members of the public with a safe, comfortable and reliable Project including all systems and sub-systems and regulate the use thereof by third parties;
  - (d) perform and fulfill all of the Concessionaire's obligations under this Agreement;
  - (e) bear and pay all expenses, costs and charges incurred in the fulfillment of all the Concessionaire's obligations under this Agreement ;and
  - (f) not assign or create any lien or Encumbrance on the Concession hereby granted or on the whole or any part of the Project nor transfer, lease or part possession therewith save and except as expressly permitted by this Agreement or the Substitution Agreement.
- 3.3 Subject to the terms and conditions of this Agreement and in consideration of above the Concessionaire shall construct and operate and maintain the Project in conformity with this Agreement, at its own cost, expense and risk along with the following rights:
- (a) levy, demand, collect and appropriate the Fares from persons liable to payment of Fares for using the Project or any part thereof and refuse entry of any person if the due Fare is not paid;
  - (b) undertake activities and derive Revenue from any and or all of the other permissible revenue sources ( other than fare box revenue) granted under the Agreement
- 3.4 The Concession Period shall commence on the Available Date and shall end on the Termination Date.

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*[Handwritten signature]*

ss or activity other than the business or  
Project, the ancillary activities and such  
permitted here-in-under.

and rights of the Parties in this Concession  
those already set forth herein, DMRC and  
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pt to recruit DMRC employees.

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**ARTICLE 4**  
**CONDITIONS PRECEDENT**

4.1 Save and except as provided in Articles 4, 5 and 22, the rights and obligations of the Concessionaire under this Agreement are subject to the satisfaction in full of the following conditions precedent to be fulfilled on or before Financial Close unless any such condition has been waived as provided in Sub-Article 4.1:

(a) Concessionaire shall have obtained such Applicable Permits (as listed in Schedule 'E') as being required prior to Financial Close unconditionally or if subject to conditions then all such conditions have been satisfied in full and such Applicable Permits are and shall be kept in full force and effect for the relevant period during the subsistence of this Agreement;

(b) the Concessionaire shall have been granted way leaves required in connection with the Project including:

(i) rights of way, free from all Encumbrances, for the construction of the depot;

(ii) permission/license to enter upon and utilise any and all parts of the Site pursuant to and in accordance with this Agreement.

This condition 4.1 (b) shall be fulfilled by DMRC in terms of this Agreement as per schedule laid out for the progressive handing over of the Site to the Concessionaire.

(c) certified true copies of all Project Agreements, and in particular the Financing Documents, the EPC Contract(s), the O&M Contract(s) (if any), and the shareholders funding agreement (except where ever specifically so exempted as condition precedent by DMRC), have been delivered by the Concessionaire to DMRC;

(d) all of the representations and warranties of the Concessionaire set forth in Article 11.2 are true and correct as on date of this Agreement and as on the Effective Date;

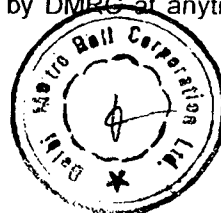
(e) DMRC shall have received from the Concessionaire copies (certified as true copies by an authorised officer of the Concessionaire) of the constitutional documents of the Concessionaire;

(f) DMRC shall have received copies (certified as true copies by a Director of the Concessionaire) of all resolutions adopted by the Board of Directors of the Concessionaire authorising the execution, delivery and performance by the Concessionaire each of the Project Agreements;

(g) DMRC shall have received from the Indian legal counsel of the Concessionaire a legal opinion with respect to the authority of the Concessionaire to enter into this Agreement and the Project Agreements and the Financing Documents.

4.2 Any of the conditions precedent set forth in Sub-Article 4 save and except condition of Sub-Article (b) and (c) thereof, may be waived fully or partially by DMRC at anytime in its sole discretion.

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**4.3 Obligation to Satisfy the Conditions Precedent.**

- 4.3.1 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable assistance as may be required to assist that Party in satisfying the Conditions Precedent for which the Party is responsible.
- 4.3.2 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.4 If all of the Conditions Precedent set forth in Sub-Article 4 have not been satisfied on or before the Financial Close and the DMRC has not waived, fully or partially, such unsatisfied conditions under Sub-Article 4.2, DMRC may, notwithstanding anything to the contrary contained in this Agreement, terminate this Agreement in accordance with provisions of Sub-Article 29.2 without being liable in any manner whatsoever to the Concessionaire and forfeit the Performance Security by way of Damages, provided that where DMRC does not fulfill its obligations under Sub-Article 4.3 and terminates this Agreement under this Sub-Article 4.4 it shall refund in full the Performance Security.

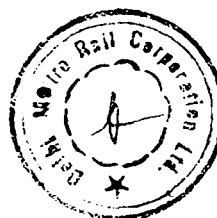


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**ARTICLE 5**  
**PERFORMANCE SECURITY**

- 5.1 Not later than at the time of signing of this Agreement the Concessionaire shall, for due and faithful performance of its obligations during the Concession Period, provide to DMRC an unconditional and irrevocable bank guarantee from a Bank in the form set forth in Schedule 'F' (the "Performance Security") for a sum equivalent to Rs. 750 million (Rupees seven hundred fifty million) in the form set forth in Schedule-- F and initially valid up to the 31st day of October 2010 and thereafter, to be extended from time to time as required.
- 5.2 Failure of the Concessionaire to maintain the availability of the Performance Security to DMRC by extending its validity at least 60 days before its due expiry at any time during the term of this Agreement shall entitle DMRC to encash the Performance Security before its expiry and to terminate this Agreement in accordance with the provisions of Sub-Article 29.
- 5.3 The Performance Security shall be released by DMRC to the Concessionaire in tranches as follows:
- |  |     |
|--|-----|
| (a) On achieving COD                       | 50% |
| (b) After COD plus 10 years                | 30% |
| (c) On completion of the Concession Period | 20% |
- 5.4 In the event of the Concessionaire being in default in the due and faithful performance of its obligations under this Agreement and failing to remedy such default within the Cure Period, the DMRC shall without prejudice to its other rights and remedies hereunder be entitled to encash and appropriate the Performance Security as Damages for such default. Upon such encashment and appropriation of the Performance Security, DMRC shall grant a period of 30 (thirty) days to the Concessionaire to provide fresh Performance Security and in case of partial appropriation to replenish to the original level and the Concessionaire shall within the time so granted furnish to DMRC such Performance Security failing which DMRC shall be entitled to Terminate this Agreement under Sub-Article 29.2. The provision set forth in Sub-Article 5.2 and this Sub-Article 5.3 shall apply mutatis-mutandis to replenishments or such fresh Performance Security.
- 5.5 Notwithstanding anything to the contrary contained in Sub-Article 5.4, upon furnishing of fresh Performance Security in accordance with Sub-Article 5.4, the Concessionaire shall be granted an additional period of 60 (sixty) days as Cure Period for remedying the defaults and complying with his obligations under this Agreement. In the event of the Concessionaire continuing to be in breach of the provisions of this Agreement after such Cure Period, DMRC shall be entitled to terminate this Agreement under the provisions of Sub-Article 29.2.

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**ARTICLE 6**  
**FARES**

- 6.1 During the Operation Period the Concessionaire shall be entitled to demand, collect and appropriate Fare from the Users in accordance with this Agreement and the Fare Notification as set forth in below and in Sub Article 6.3.

It is agreed that the maximum one way Fare and Monthly Fare between the pairs of stations as prescribed below shall be the initial fares valid for first two years of operation. The Concessionaire expressly agrees that initial Fare shall be as provided in this Agreement and as revised from time to time based on the annual Fare Revision Formula as provided in this agreement, provided further that the Concessionaire may determine and collect Fare at such lower rates as it may, by public notice to the Users, specify in respect of all or any category of Users.

**(a) Maximum One Way Fare**

- (i) between New Delhi Railway Station and IGI Airport : Rs. 150 (Rs One Hundred and fifty)
- (ii) between Dwarka Sector 21 and IGI Airport : Rs. 30 (Rs Thirty)

**(b) Maximum Monthly Fare (valid for a maximum of 60 single journeys in a month)**

- (i) between New Delhi Railway Station and IGI Airport : Rs 2000 (Rs Two Thousand)
- (ii) between Dwarka Sector 21 and IGI Airport : Rs. 600 (Rs Six Hundred)

No additional charges shall be levied for the handling and transportation of luggage of the users.

**6.2 Fare Revision Formula**

The Concessionaire and DMRC agree that after completion of the initial two years of operation, the Concessionaire shall be entitled for an increase in fare which shall be limited to 90% (ninety percent) of the variation in the WPI occurring between COD and two years after COD. Such revisions will also be permissible at the end of every two years thereafter till Termination.

Provided that for ease of payment and collection at the time of subsequent revisions such Fare shall be rounded off to the nearest five rupees in respect of pair of stations between Dwarka Sector 21 and IGI Airport and 10 (Ten) rupees in respect of other station pairs.

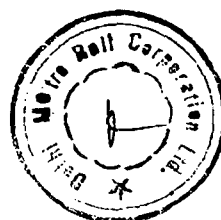
- 6.3 The Concessionaire hereby acknowledges and agrees that upon payment of Fare, any User shall be entitled to use the Project for travel and the Concessionaire shall not place or cause to be placed any restriction on such use except to the extent specified in any Applicable Law, Applicable Permit or the Provisions of this Agreement.
- 6.4 The Concessionaire thus acknowledges that the Fare Notification, inter alia, provides for revision in the Fare in accordance with the formula provided in Article 6.2 above and hereby confirms that save and except as provided in this Agreement and the Fare Notification, the Concessionaire is not entitled to and shall not seek any relief whatsoever from DMRC, GOI or GNCTD on account of increase or otherwise in WPI or on any other account except in accordance with the express provisions of this Agreement.
- 6.5 The Fares collected by the Concessionaire or DMRC or DMRC's nominee pursuant hereto shall be deposited in the Escrow Account and appropriated in accordance with the provisions of Article 23.

The value of Fares deducted from use of common DMRC/AMEL Stored Value Tickets, as apportioned to the Concessionaire by DMRC Central Clearing House, shall be accounted in the Escrow Account, in accordance with the provisions of Article 23.



- 6.7 The Concessionaire may delegate its right to collect Fares to the O&M Contractor or to any other person, provided however that notwithstanding such delegation, the Concessionaire shall be and remain solely liable and responsible for the collection of Fare in accordance with this Agreement and its deposit into the Escrow Account.

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## ARTICLE 7 NON-FARE REVENUES

7.1 In addition to the right to charge and collect Fares, as set forth in Article 6, the Concessionaire shall be entitled to participate in Commercial Leases and other activities which may yield additional revenues to the Concessionaire, subject to the provisions of this Article 7. All such Non Fare Revenue collected by the Concessionaire pursuant hereto shall be deposited in the Escrow Account and appropriated in accordance with the provisions of Article 23. Such activities may include, *inter alia*, the following:

### 7.1.1 Advertisements

The Concessionaire shall be entitled, subject to all Laws and Regulations and to obtaining all necessary Consents, to display visual advertisements inside the rolling stock, the stations, or along the route. Without derogating from the aforesaid, should the Concessionaire wish to display advertisements, including stations, elevated alignment sections and/or tunnels, the Concessionaire shall bear full and sole responsibility for reaching all necessary agreements and obtaining all necessary Consents in relation thereto, including the consent of the Municipalities and any other Relevant Authority. However, display of advertisement within the Airport Boundary (either inside the stations or on other structures) is not permitted. Notwithstanding the provisions of Sub-Article 7.1.1, and without derogating from the provisions of Sub-Article 7.3, DMRC may instruct the Concessionaire to remove advertisements which it considers to be abusive or offensive or contrasting the public interest.

### 7.1.2 Vending Machines

The Concessionaire shall be entitled to install and operate vending machines in the un-paid area of the concourse level of New Delhi, Shivaji Stadium, and Dhuala Kuan stations, subject to the Laws and regulations and the provisions of this Agreement.

### 7.1.3 Communications

In addition to providing for its own communications needs, the Concessionaire shall be entitled to provide LCX cables and equipment in stations and tunnels for the operation of passenger mobile telephones, and provide a route for cables of commercial communications operators, subject to the provisions of all Laws and Regulations. The Concessionaire shall bear full and sole responsibility for obtaining all necessary Consents for such use, including any necessary licenses from any applicable Government Agency.

### 7.1.4 Additional Entrances from Adjacent Property

- (i) The Concessionaire shall be entitled to design and construct, or to allow the design and construction of, additional entrances to the Stations from adjacent properties, provided however that the agreement executed for this purpose between the Concessionaire and any third party which holds the appropriate legal rights in such adjacent property shall be subject to the requirements and restrictions on Commercial Leases in Sub-Article 7.1.6.



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- (ii) The Concessionaire shall bear full and sole responsibility for the compliance of any additional entrances from adjacent property with all Laws and Regulations, Standards and Codes and with the requirements of the applicable planning authority and for obtaining all necessary Consents in connection therewith. For the removal of doubt, where the execution of any such additional entrance requires an amendment to the Concessionaire's design the provisions of Sub-Article 10.1(d) shall apply.

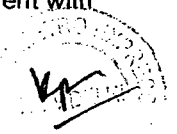
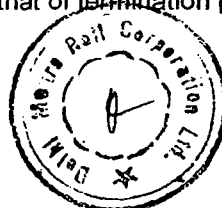
#### 7.1.5 Retail and Service Outlets

- (i) The Concessionaire shall be entitled to design and construct, or to allow the design and construction of, shops, kiosks and the like within public areas of New Delhi, Shivaji Stadium and Dhaula Kuan Stations, provided however that the agreement executed for this purpose between the Concessionaire and any third party for any legal rights in such areas shall be subject to the requirements and restrictions on Commercial Leases in Sub-Article 7.1.6.
- (ii) The Concessionaire shall bear full and sole responsibility for the continuous compliance of any shops, kiosks and the like within public areas of Stations with all Laws and Regulations, Standards and Codes, including with the requirements of NFPA 130 and/or any local codes applicable for the emergency evacuation of public areas, and with the requirements of the applicable planning authority and for obtaining all necessary Consents in connection therewith. For the removal of doubt, where the execution of any such additional entrance requires an amendment to the Concessionaire's design the provisions of Sub-Article 10.1(d) shall apply.

#### 7.1.6 Property Development and Development Rights

- (i) Subject to the limitations of the Site stated in Schedule 'A' and/or shown in the layout drawings in Schedule 'I', DMRC will allow the Concessionaire right and/or license to utilize the land over, under and around of the depot and within the stations for property development/commercial exploitation during the concession period with a view to improving the financial viability of the Project. The Concessionaire may construct, or cause or permit to have constructed, at his own cost, buildings and/or built-up areas in addition to the Required Buildings at the specified locations, after first obtaining the approval of DMRC in writing. All such buildings and/or built-up areas shall follow relevant building rules and regulations, Airport Authority of India (AAI) and fire safety regulations and all other applicable municipal approvals, statutory laws and regulations. Such development shall be subject to a Commercial Lease for a term not exceeding the remaining term of the Concession Period and shall be in a form and containing such conditions as may be prescribed by DMRC.
- (ii) No property developed by the Concessionaire in accordance with this Sub-Article 7.1.6 shall be sold but shall only be let out for rental purpose during the Concession Period. Such buildings and/or built up area, with all the attendant facilities, developed by or on behalf of Concessionaire shall be handed over to DMRC at the Termination of the Concession free of encumbrances, and all moneys due or previously paid for the rights to such property beyond the Termination of the Concession Period shall be paid to DMRC, and all Commercial Leases entered into by the Concessionaire shall include provisions to this effect including that of termination prior to or concurrent with the Termination of the Concession.

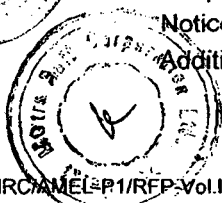
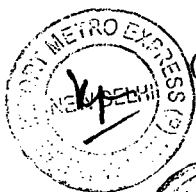
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### 7.1.7 Additional Commercial Activities

In addition to the activities contained in Sub-Articles 7.1.1 (Advertisements), 7.1.2 (Vending Machines), 7.1.3 (Communications), 7.1.4 (Additional Entrances from Adjacent Property), 7.1.5 (Retail and Service Outlets), and 7.1.6 (Property Development and Development Rights), the Concessionaire shall be entitled to perform any other Non-Fare Revenue activity (each one an "Additional Commercial Activity") subject to the prior approval of DMRC. With respect to any such Additional Commercial Activity, the following provisions shall apply:

- (i) Within a reasonable time in advance, and in any case not less than 60 (sixty) days in advance, of entering into any agreement in relation to any Additional Commercial Activity in which the Concessionaire may wish to be involved, the Concessionaire shall issue DMRC with a notice of such intention (a "Concessionaire's Notice of Additional Commercial Activity"). Such notice shall include a summary detailing the intended Additional Commercial Activity, any expected implications thereof on the Project, its Projected revenues, the works and the manpower required, any agreements which the Concessionaire intends to enter into in connection therewith and shall clearly identify, at a minimum:
  - (a) the degree to which the proposed Additional Commercial Activity may affect the quality of the Project or the likelihood of successful execution of the Project or may otherwise materially adversely affect the Project;
  - (b) the proposed Additional Commercial Activity may interfere with the relationship of DMRC with third parties;
  - (c) that the financial strength of the Concessionaire and/or the Contractor(s) is sufficient to perform the proposed Additional Commercial Activity;
  - (d) the degree to which the proposed Additional Commercial Activity materially affects the risks or costs to which DMRC is exposed;
  - (e) the degree to which the proposed Additional Commercial Activity materially affects the Concessionaire's ability to transfer the Project or the State's ability to receive and operate the Project upon the transfer thereof on the Termination Date.
- (ii) DMRC shall examine the Concessionaire's Notice of Additional Commercial Activity, taking into consideration all relevant issues detailed in the Concessionaire's Notice of Additional Commercial Activity. In addition, DMRC shall examine whether the intended Additional Commercial Activity is considered, in its opinion, to be abusive or offensive or otherwise contrasting the public interest.
- (iii) Where DMRC determines that, in its opinion, such Additional Commercial Activity is expected to adversely affect DMRC's interests in the Project or to otherwise contrast the public interest, it may, within 60 (sixty) days from receipt of the Concessionaire's Notice of Additional Commercial Activity, object to the Concessionaire's intended Additional Commercial Activity by instructing the Concessionaire and/or any



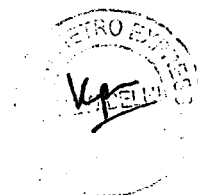
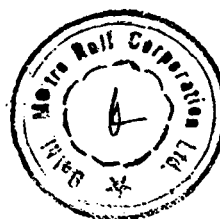
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subsidiary thereof to refrain from engaging in the intended Additional Commercial Activity.

- (iv) If DMRC determines at any time after the aforementioned 60 (sixty) days period that the actual implications of the Additional Commercial Activity deviate or will deviate from the expected implications detailed in the Concessionaire's Notice of Additional Commercial Activity, and that the actual implications thereof have such an adverse effect on DMRC's interests in the Project and/or the public interest or are expected to have such effect, it may, notwithstanding the expiry of the aforementioned 60 (sixty) day period, exercise its right to object to such Additional Commercial Activity by instructing the Concessionaire and/or any subsidiary thereof to cease its engagement in the Additional Commercial Activity or refrain from any further Additional Commercial Activity in order to minimize to the extent possible or otherwise avoid any adverse effect on DMRC's interests in the Project and/or the public interest. The Concessionaire shall comply with DMRC's instructions and shall cause any subsidiary thereof to comply with the same.

- 7.2 Nothing contained in this Article 7 or any other provision of this Agreement shall be construed as derogating from the Concessionaire's full and sole responsibility for the feasibility and the exercise of the Non-Fare Revenue activities. The Concessionaire shall bear all costs deriving from the exercise of such activities. Without derogating from the generality of the forgoing, should the performance of any Non-Fare Revenue activity necessitate obtaining or amendment of any Consent, the Concessionaire shall bear full and sole responsibility for obtaining all necessary Consents in relation to such activity.
- 7.4 The Concessionaire shall ensure that all transactions are Arms Length Transaction and include binding provisions, giving effect to the to DMRC's rights under this Article 7 and the provisions of Article 30 for Divestment, are incorporated in all the relevant agreements procured by the Concessionaire and/or any Subsidiary thereof with respect to any Non-Fare Revenue activity, including provisions to allow for any changes to such agreements as may be necessitated by the exercise of DMRC's rights hereunder.
- 7.5 It is hereby clarified that nothing contained in this Article 7 shall be deemed as imposing any obligation on DMRC or any Government Agency to grant any Consent required by the Concessionaire for the purpose of generating any Non-Fare Revenue. This is mere an enabling provision and any proposal of Concessionaire may be refused without ascribing any reason for the same.

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**ARTICLE 8**  
**CONCESSION FEE AND OTHER PAYMENTS BY THE CONCESSIONAIRE**

**8.1 License Fee**

In consideration of the grant of site and right of way under this Agreement, the License Fee payable by the Concessionaire to the DMRC shall be Re.10000.00 (Rupee Ten thousand) per year during the term of this Agreement

**8.2 Concession Fee (as per Bid):**

The Concessionaire agrees to provide to DMRC cash payment as Concession Fee equal to the sum set forth in the Bid of the Bidder and accepted by DMRC namely, **Rs. 510,000,000 million (Rupees Five Hundred and Ten Million)** in accordance with the provisions of this Article 8.2 in the first year from COD. Further the above Concession Fee shall be increased by 5% (cumulative) every year thereafter and be paid annually till Termination.

The Concession Fee shall be paid in advance within 90 (ninety) days of the commencement of the year for which it is due and payable.

**Additional retail space at Concourse level of New Delhi Station and Shivaji Stadium Station**

In case the additional retail space is available to the concessionaire at concourse due to increase in the size of the station, the Concessionaire shall pay additional concession fee to DMRC on this account. The rate for this additional concession fee shall be on pro-rata basis as stated by the Concessionaire in Appendix-12B condition no.2 (Rs. 30 million for 960 sqm i.e. Rs. 31250/- per sqm). This additional concession fee shall be added to the concession fee of Rs. 510 million.

The enhancement applicable to the concession fee during subsequently years as per this clause, shall be on total concession fee including this additional concession fee.

**Cost of operation and maintenance of clearing house to be shared:** The cost of operation and maintenance of the sharing house will be shared by DMRC and Concessionaire.

**8.3 Percentage Revenue Sharing:**

Starting from COD, the Concessionaire further agrees to apportion its Gross Revenue to DMRC as follows:

- a) One percent of Gross Revenue from first to fifth year
- b) Two percent of Gross Revenue from sixth to tenth year
- c) Three percent of Gross Revenue from eleventh to fifteenth year
- d) five percent of Gross Revenue from sixteenth year onwards till the Termination Date

The Concessionaire shall remit the applicable share of Gross Revenue to DMRC on a quarterly basis within 10 days of the end of each calendar quarter.

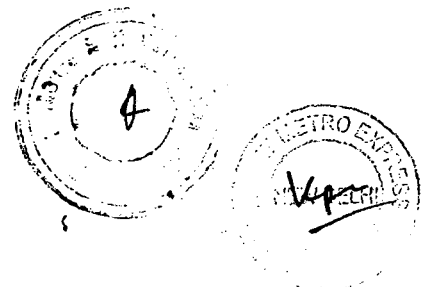
**8.4** DMRC at any time during the Concession Period, at its sole discretion can verify the Fare realized by the Concessionaire. DMRC for purpose of determining the true picture may undertake a traffic sampling for a continuous period of seven day or such other action as deemed fit. The numbers arrived at and duly verified by DMRC appointed Consultant and auditors for the purpose shall be considered final and binding on the Concessionaire. Similarly DMRC may verify the collection of non fare revenue also.



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**SECTION -III  
OBLIGATIONS AND UNDERTAKINGS**

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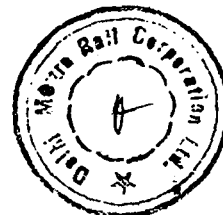
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**ARTICLE 9  
OBLIGATIONS OF DMRC**

9.1 DMRC agrees to observe, comply and perform the following:

- (a) DMRC at its own cost undertake, comply with and perform all its obligations set out in this Agreement or arising herein under
- (b) enable access to the Site, free from Encumbrances, from public roads and highways in accordance with this Agreement progressively as per the agreed milestone;
- (c) provide the Site in accordance with the programme given in Schedule 'H' and thereafter permit peaceful use thereof by the Concessionaire as licensee under and in accordance with the provisions of this Agreement without any let or hindrance from DMRC or persons claiming through or under it;
- (d) upon written request from the Concessionaire and subject to the Concessionaire complying with the Applicable Laws, assist and provide all reasonable support to the Concessionaire in obtaining Applicable Permits;
- (e) upon written request from the Concessionaire, assist the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water, electricity and telecommunication facilities at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;
- (f) subject to and in accordance with the Applicable Law assist the Concessionaire in getting the government and police assistance to regulate the traffic on the Site.
- (g) not do any act, deed or thing that may in any manner be violative of any of the provisions of this Agreement and.
- (h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement

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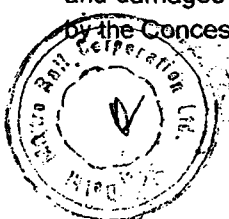


**ARTICLE 10**  
**OBLIGATIONS OF THE CONCESSIONAIRE**

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

- (a) make, or cause to be made, necessary applications to the relevant Governmental Agencies with such particulars and details, as may be necessary for obtaining all Applicable Permits, and obtain such Applicable Permits in conformity with the Applicable Laws;
- (b) submit to DMRC certified true copies of each of the Project Agreements within 7 (seven) days of their execution;
- (c) not enter into any Project Agreement the term of which extends beyond the Termination Date without DMRC's consent;
- (d) not make any replacement, amendment or modifications to any of the Project Agreements without the prior written consent of DMRC;
- (e) give DMRC not less than 30 (thirty) days written notice prior to entering into, amending or replacing any Project Agreement so as to enable DMRC to provide its consent or offer its comments, if any thereon which, if made, shall be duly considered and given effect to by the Concessionaire before entering into, amending or replacing such Project Agreement;
- (f) remove promptly from the Project Site all surplus construction machinery and materials, waste materials (including, without limitation, hazardous materials and waste water), rubbish and other debris (including without limitation accident debris) and shall keep the Site in a neat and clean condition and in conformity with the Applicable Laws and Applicable Permits;
- (g) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
- (h) provide to DMRC reports on regular basis during the Construction Period and the Operations Period in the form and manner set forth in this Agreement and Schedule 'W';
- (i) acquire such real estate, as the Concessionaire may deem appropriate for the Additional Facilities and to indemnify and save harmless and defend GOI, DMRC, and GNCTD from and against all proceedings, claims, demands, costs, expenses, losses and damages arising out of or relating to the securing of rights to use such real estate

by the Concessionaire



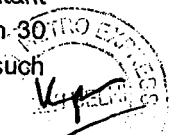
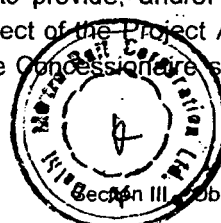
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- (j) ensure and procure that each Project Agreement and Commercial Lease contains provisions that entitle DMRC to step into such agreement in its discretion in place and substitution of the Concessionaire in the event of Termination of this Agreement ;
- (k) appoint, supervise, monitor and control the activities of Contractors under their respective Project Agreements as may be necessary;
- (l) 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;
- (m) comply with all Applicable Permits and Applicable Laws in the performance of the Concessionaire's obligations under this Agreement including those being performed by any of the Contractors;
- (n) develop, implement and administer a safety, health and environment program for the Project, the users thereof, and the Contractors personnel engaged in the provision of any services under any of the Project Agreements including correction of safety violations and deficiencies, and taking of all other actions necessary to comply with the Schedule 'S' requirements and Applicable Laws;
- (o) take all reasonable precautions for the prevention of accidents on or about the Project and provide assistance and emergency medical aid to accident victims;
- (p) not to place or create and nor permit any Contractor or other person claiming through or under the Concessionaire to create or place any Encumbrance or security interest over all or any part of Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as expressly set forth in this Agreement;
- (q) be responsible for safety, soundness and durability of the Project including all structures forming part thereof;
- (r) not claim or demand possession or control of any roads, structures or real estate which do not form part of the Airport Metro Express Line;
- (s) after receiving vacant possession of the Site or part thereof, ensure that such Site remains free from all encroachments and take all steps necessary to remove such encroachments, if any
- (t) make such official payment to police department or any Government Agency as may be required for the provision of such services as are not provided in the normal course or are available on payment;

10.2 The Concessionaire shall submit to DMRC the drafts of the Project Agreements including in particular the EPC Contract, the Financing Documents, and the O&M Contract for its review. DMRC shall have the right but not the obligation to provide, and/or have the Consultant provide, comments and observations, if any, in respect of the Project Agreements within 30 (thirty) days of the receipt thereof by DMRC and the Concessionaire shall consider all such

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comments/observations. Any such comments/observations by DMRC and/or the Consultant on any Project Agreements or the failure to provide such comments shall not relieve or absolve in any manner whatsoever the Concessionaire of its obligations, duties and liabilities under this Agreement nor shall it make DMRC and/or Consultant liable to the Concessionaire in any manner whatsoever and shall be without prejudice to the rights of DMRC hereunder.

- 10.3 During the Construction Period, the Concessionaire shall be responsible for maintaining all such Sections of the Site as have been handed over to it, provided however that should any defect in any part of the DMRC Works become apparent within 12 (twelve) months of the handing over of that Section to the Concessionaire, the Concessionaire may so advise the Consultant and, if so, shall afford access to the relevant DMRC Works contractor for its correction.
- 10.4 The Concessionaire shall, at all times, afford access to the Site to the authorised representatives of DMRC, the Consultant, Senior Lenders, and to the persons duly authorised by any Governmental Agency having jurisdiction over the Project, including those concerned with safety, security or environmental protection to inspect the Project and to investigate any matter within their authority and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions with minimum disruption to the construction, operation and maintenance of the Project consistent with the purpose for which such persons have gained such access to the Site.
- 10.5 Structure of the Concessionaire and Obligations relating to the Change of Ownership
- 10.5.1 The Concessionaire has been incorporated as a validly existing company in the Companies Act, 1956 and shall remain a valid exiting active company from the date of incorporation of the Concessionaire, throughout the Concession period and as long as the Concessionaire has outstanding obligations and/ or guarantees towards DMRC.
- 10.5.2 From the date of incorporation of the Concessionaire and throughout Concession Period, the Concessionaire's and memorandum and articles of association shall not be materially amended, supplemented or otherwise modified unless agreed to by DMRC, and agreement not to be unduly withheld by DMRC.
- 10.5.3 From the date of incorporation of the Concessionaire and throughout the Concession Period, the Concessionaire shall remain a special purpose company with the sole purpose of observing and fulfilling the obligations of the Concessionaire in this Agreement, accepting the right granted thereto and performing other such activities directly connected to or such ancillary activities expressly permitted to in this Agreement.
- 10.5.4 Through out the Concession Period, the Concessionaire shall have no subsidiaries and/ or shareholdings and/ or other holdings in any company and/ or holding of securities convertible to shares of any company or options for such securities, except for holdings of securities registered on stock exchanges, which do not confer on the Concessionaire the status of an interested party and except for holding in subsidiaries established if any under the provisions of this agreement with prior written approval of DMRC and on such terms as stipulated by DMRC.



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10.5.5 The organizational structure and management of the Concessionaire and its personnel shall at all times be suited to and shall fully reflect the Concessionaire's compliance with its obligations under this agreement.

**10.6 Change in Ownership Structure of the Concessionaire**

10.6.1 The Concessionaire shall not undertake or permit any Change in Ownership except with the prior written approval of DMRC and except as permitted under this Agreement.

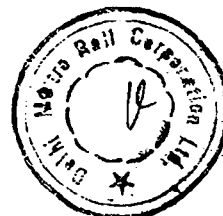
10.6.2 For the purpose of this Agreement, the Change of Ownership means any sale or other disposal other than to Affiliates of the transferor of any legal, beneficial or equitable interest in any or all of the equity share capital of the Concessionaire ( including control over the exercise of voting rights conferred on that equity share capital or the control over right to appoint directors or other managers), which results in a structure of the Concessionaire other than the equity holders of the Concessionaire prior to change:

- (i) Controlling the composition of the majority of the board of directors of the Concessionaire
- (ii) Controlling the voting power of the board of directors or any class of shareholders of the Concessionaire
- (iii) Holding directly or indirectly, more than one half of the equity of the Concessionaire

10.6.3 Notwithstanding anything contrary contained in this Agreement, during the Concession period following will apply with regard to share holding structure and Change of Ownership of the Concessionaire:

- i. the aggregate equity share holding of the Consortium Members and their Associates in the issued and paid up equity share capital of the Concessionaire shall not be less than 100% (one hundred per cent) until the date falling 2 (two) years after COD and 51% (fifty-one per cent) for 10 (ten) years following COD,
- ii. provided however that the equity share of the Lead Member of the Consortium in the issued and paid up share capital of the Concessionaire shall not be less than 30% (thirty per cent) until the date falling 2 (two) years after COD and 26% (twenty-six per cent) until the date falling 10 (ten) years after COD and that the purchaser of the Lead Member's equity share thereafter shall be subject to the prior approval of DMRC
- iii. Further any Change of Ownership or change in equity structure of the Concessionaire shall be with prior consent of DMRC and shall be further subjected to the limitation that the new shareholder holders of the Concessionaire shall assume full responsibility under this Agreement including that of repayment of any residual loan of the Project.

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**ARTICLE 11  
REPRESENTATIONS AND WARRANTIES**

**11.1 Representations and Warranties of DMRC.**

DMRC represents and warrants to the Concessionaire that:

- (a) It has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement.
- (b) It has taken all necessary actions under the Applicable Laws to authorize the execution, delivery and performance of this agreement
- (c) It has the financial standing and capacity to perform its obligations under the agreement
- (d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof; and
- (e) DMRC is subject to the laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any sovereign immunity in any jurisdiction in regard to matters set forth in this Agreement.
- (f) It has complied with Applicable Laws in all material respects.
- (g) All information provided by it in the Tender Notice and Invitation to Bid cum RFP in connection with the Project is to the best of knowledge or belief, true and accurate in all material respects.
- (h) Upon the Concessionaire paying the Concession Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with the peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement
- (i) To the extent DMRC has knowledge, there are no facts or information related to the Project and Disclosed Data relating to that which DMRC has intentionally not disclosed to the Concessionaire and which, if learned by the Concessionaire, might reasonably be expected to materially affect the Concessionaire's evaluation of the risks the Concessionaire is assuming pursuant to this Agreement or might reasonably be expected to deter the Concessionaire from completing the transactions contemplated by this Agreement on the terms of this Agreement

**11.2 Representations and Warranties of the Concessionaire**

The Concessionaire represents and warrants to DMRC that:

- (a) It is duly organized, validly existing and in good standing under the laws of India and

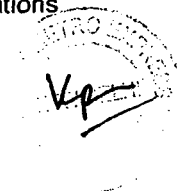


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has taken the full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby

- (b) It has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorize the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement.
- (c) It has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement
- (d) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms thereof.
- (e) It is subject to laws of India with respect to this Agreement and it hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement on matters arising thereunder including any obligations, liability or responsibility hereunder.
- (f) All the information furnished in the Bid is, and shall be, true and correct as on the date of this Agreement, Effective Date and COD and the Balance Sheet and Profit and Loss Account of the Concessionaire for each of its Accounting Years after the Effective Date furnished to DMRC shall give true and fair view of the affairs of the Concessionaire;
- (g) It shall furnish a copy of the audited accounts of the Concessionaire within 120 (one hundred twenty) days of the close of its each Accounting Year after the Effective Date and any material change subsequent to the date of such accounts shall be notified to DMRC by the Concessionaire within 30 (thirty) days of its occurrence and warrants that the accounts and the information furnished as aforesaid shall be true and correct;
- (h) 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 Memorandum and Articles of Association of the Concessionaire or any Member of the Consortium or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which, it is a Party or by which it or any of its properties or assets is bound or affected;
- (i) There are no actions, suits, proceedings, or investigations pending or, to the Concessionaire's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement

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- (j) It has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Governmental Agency which may result in any Material Adverse Effect or impairment of the Concessionaire's ability to perform its obligations and duties under this Agreement;
- (k) It has complied with all Applicable Laws in all material aspects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect on its financial condition or its ability to perform its obligations and duties under this Agreement;
- (l) Each Consortium Member was and is duly organised and existing under the laws of the jurisdiction of its incorporation and has full power and authority to consent to and has validly consented to and requested DMRC to enter into this Agreement with the Concessionaire pursuant to the LOA and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (m) All rights and interests of the Concessionaire in and to the Project shall pass to and vest in DMRC on the Termination Date free and clear of all liens, claims, and Encumbrances without any further act or deed on the part of the Concessionaire or DMRC and that none of Project Assets including materials, supplies or equipment forming part thereof shall be acquired by the Concessionaire subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement; and
- (n) No representation or warranty by the Concessionaire contained herein or in any other document furnished by it to DMRC, or to any Governmental Agency in relation to Applicable Permits contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading.
- (o) The Consortium members and their Associates have the financial standing and resources to fund the required equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement
- (p) Each Consortium Member is duly recognized and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Government to enter into this Agreement with the Concessionaire pursuant to the Letter of Acceptance, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement.
- (q) No representation or warranty by it contained herein or in any other document furnished by it to DMRC or to any other Government department in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or omit to state a material fact necessary to make such representation or warranty not misleading.

- (r) No sums in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or

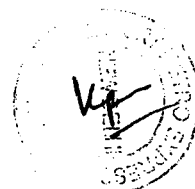
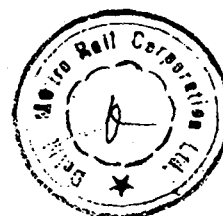
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entering into this Agreement or for influencing or attempting to influence any officer or employee of DMRC or Consultants in connection therewith.

### 11.3 Disclosure

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

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## ARTICLE 12 DISCLAIMER

- 12.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has after a complete and careful examination made an independent evaluation of the passenger demand, of the market for services and/or facilities, of the Specifications and Standards, and of the Site, of the Scope of the Project, Tender Notice, local conditions, physical qualities of ground, subsoil and geology and all the information provided by DMRC or gathered otherwise, and has determined to the Concessionaire's satisfaction the nature and extent of such difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder.
- 12.2 Save as provided in Article 11.1, DMRC makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and /or completeness of the information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against DMRC in this regard
- 12.3 Save as Article 11.1 (i), DMRC gives no warranty or guaranty of whatever nature in respect of Disclosed Data or data provided to the Concessionaire and specifically (but without limitation), DMRC does not warrant that the Disclosed data represents all of the information in its possession or power (either during conduct of the Concessioneing process for the Project or at a time of this agreement) relevant or material to or in connection with the Project or the obligations of the Concessionaire under this Agreement or any of the Project Documents.
- 12.4 DMRC shall not be liable to the Concessionaire in respect of any failure to disclose or make available to the Concessionaire (whether before, on or after execution of this Agreement) any information, documents, data or any failure to review or update the Disclosed Data, nor any failure at any stage to inform the Concessionaire of any inaccuracy, error, omission, defects or inadequacy in the Disclosed Data. .
- 12.5 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Sub-Article 12.1 above and hereby confirms that DMRC shall not be liable for the same in any manner whatsoever to the Concessionaire, the Consortium Members or their Associates or to any person claiming through or under any of them.



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**SECTION – IV  
DEVELOPMENT AND OPERATIONS**

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### ARTICLE 13

#### Use and Development of the Site

- 13.1 DMRC hereby grants to the Concessionaire for the Development Period access to the Site for carrying out such surveys, investigations and/or tests as the Concessionaire may deem necessary. Such surveys, investigations and/or tests are to be carried out at the Concessionaire's cost, expense and risk and without causing disruption to the DMRC Works.

During the Development Period and the Construction Period, and subject to giving prior written request, the Concessionaire shall be permitted to visit the DMRC Works under construction along with the Consultant, however DMRC is under no obligation to accept or to act on any comments or advice from the Concessionaire.

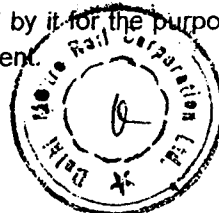
- 13.2 DMRC hereby grants to the Concessionaire for the Concession Period the access to the Site (as described in Schedule 'A') and to survey, design, engineer, procure, construct, operate and maintain the Project, in accordance with this Agreement. Such right and license of the Concessionaire to the use the Site shall be subject to:

- (a) Any existing utilities on, under or above the Site are kept in continuous satisfactory use, if necessary by the use of suitable temporary or permanent diversions with the authority of the controlling body of that utility;
- (b) Any existing roads or right of ways are kept in continuous satisfactory use, if necessary, by the use of suitable temporary or permanent diversions with the authority of the controlling body of that road or right of way. For any diversion or construction, of temporary roads, DMRC will assist the Concessionaire in acquiring the right of way;
- (c) Subject to compliance with the Concessionaire's Safety Plan then in effect, a right of access by the DMRC itself and any of its agents to perform their obligations and rights under the Concession Agreement or any other functions that they have, and to conduct any study or trial for the purpose of research;
- (d) DMRC retains the right to cross the Project above and/or outside the scheduled fixed and moving dimensions of the Project without in any way adversely affecting the development and or operation of the Project
- (e) It is expressly agreed that trees on the Site are property of the Government and that Concessionaire will preserve all the trees and if any such tree is required to be necessarily cut the same shall be done only with prior approval of concerned Government Authority and under information to DMRC and the Consultant.

- 13.3 ~~The license and the right to use the Site shall be granted for the purpose of carrying out the functions placed upon and exercising the rights granted to the Concessionaire under the Agreement, and not for any other purposes.~~

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

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- 13.5 Not later than the Start Date, the Concessionaire shall commence the Concessionaire's Works on the Project and complete them in accordance with this Agreement. It is expressly agreed that because of the urgency, importance and tight time schedule of the Project, the Concessionaire to start the execution of the work within 30 days from the Letter of Acceptance (Start Date). This means that the execution on the Project will start well before the Available Date.
- 13.6 The Site shall be made available to the Concessionaire pursuant hereto by DMRC free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to DMRC on account of any costs, expenses and charges for the use of such Site for the duration of the Concession Period save and except as otherwise expressly provided in this Agreement.
- 13.7 DMRC shall procure for the Concessionaire access to each Section of the Site, free of Encumbrances, including connection to at least one adjacent public road or highway, not later than the date shown for that Section in Schedule 'H'. The Concessionaire undertakes to execute the implementation of the Concessionaire's Works in accordance with the milestones and time schedule set out in the Schedule 'H', as submitted by the Concessionaire within its Proposal and accepted after review by DMRC, and as may be amended by DMRC in accordance with the provisions of this Agreement. Without derogating from the generality of the foregoing, the Concessionaire acknowledges that the delivery of different Sections of the Site pursuant to Schedule 'H' and the execution of the Concessionaire's Works will be performed in stages, whether simultaneously or consecutively, and the provisions of this Agreement shall apply to each and all milestones for the achievement of such stages. Should any delay occur in the performance of any such milestone, for any reason whatsoever, the Concessionaire undertakes to minimize, and cause its Contractors and any other person acting on its behalf to minimize, such delay and to avoid, and cause its Contractors and any other person acting on its behalf to avoid, any additional delays in respect of the performance of other milestones.
- 13.8 Except in the case of Force Majeure or specific suspension of the work by DMRC (in which case provision of Article 26 & 27 will apply) for reasons not attributable to the Concessionaire, if the Concessionaire fails to achieve any such Project milestone in Schedule H other than Project Completion, within a period of 90 (ninety) days from the date set forth in Schedule 'H' (as such may be subject to any adjustment provided under Sub-Article 13.9), then it shall pay Damages to DMRC at the rate of Rs. 200,000.00 (Rs. Two Lac) per day until such milestone is achieved. DMRC may either recover such Damages from the Performance Security or demand payment thereof from the Concessionaire. The Concessionaire shall make such payment within 15 (fifteen) days of receiving such demand from DMRC and any delay in making such payment shall attract interest at an annualised rate of SBI PLR plus two per cent. If the Concessionaire fails to achieve Project completion as per the Scheduled Project Completion Date as set forth in Schedule 'H' (as such may be subject to any adjustment provided under Sub-Articles 13.9 and/or 15.6), then it shall pay damages to DMRC as per Article 16.
- 13.9 If DMRC does not procure for the Concessionaire such access to any Section or Sections not later than the date(s) given in Schedule 'H' for any reason other than a Force Majeure Event or a breach of this Agreement by the Concessionaire, then the Consultant shall determine any adjustment to the Project Completion Schedule and, if applicable, to the Scheduled Project Completion Date and extension to the Concession Period to which the Concessionaire is entitled due to such delay and shall notify DMRC accordingly. DMRC shall adjust the Project Completion Schedule and Scheduled Project Completion Date and extend the Concession Period in accordance with the Consultant's recommendations.

**ARTICLE 14**  
**PERFORMANCE OF THE DESIGN**

14.1 In respect of the Concessionaire's obligations with respect to the Design of the Concessionaire's Works, the following shall apply:

- (a) The design work shall commence within 30 (thirty days) of issue of Letter of Acceptance (Start Date).
- (b) All interface related design issues (with all civil construction contractors and other designated contractors) shall be completed within 6 (six) months from the Start Date. For this purpose the Concessionaire shall maintain a design interface team and shall lead the design co-ordination with civil and designated contractors. DMRC and/or the Consultant shall co-ordinate such meetings at the written request of the Concessionaire. Any unresolved issue beyond this period shall be the responsibility of the Concessionaire and has to be resolved by the concessionaire at its cost.
- (c) The Concessionaire shall submit his Design in 3 submittals as explained in Schedule 'D'.
- (d) The Concessionaire shall prepare and submit with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Design documents within each submittal to DMRC and the Consultant for review and comments.
- (e) By forwarding the Design for review and comment in accordance with Sub-Article 14.1(a) above, the Concessionaire represents that it has determined and verified that the design and engineering including field construction criteria related thereto is in conformity with the Specifications, Standards and quality set forth in this Agreement for and in respect of the Airport Metro Express Line.
- (f) Within 30 (thirty) days of the receipt of the Design, DMRC and the Consultant shall review the same and the Consultant shall collate its comments and with those of DMRC and convey the consolidated list to the Concessionaire with particular reference to the conformity or otherwise with the Specifications and Standards set forth in this Agreement. It is expressly agreed that notwithstanding any review and comment by DMRC and the Consultant on any Design document, or any failure of DMRC and/or the Consultant to provide any comments thereon, DMRC shall not be liable for the same in any manner whatsoever and the Concessionaire shall remain solely responsible for its Design and shall not be relieved or absolved in any manner whatsoever of its obligations, duties and liabilities as set forth in this Agreement.
- (g) If the comments of DMRC or the Consultant indicate that the Design is not in conformity with the Specifications and Standards set forth in this Agreement, such Design shall be revised by the Concessionaire to the extent necessary and resubmitted to DMRC for review and comments. The Consultant shall give the consolidated comments of DMRC and the Consultant, if any, within ~~15 (fifteen)~~ <sup>10 (ten)</sup> days of the receipt of such revised Design provided, however, that any comments of DMRC or the Consultant, or the failure of DMRC or the Consultant to give any comments on

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such revised Design document, shall not relieve or absolve the Concessionaire of its obligation to conform to such Specifications and Standards.

- (h) The Concessionaire shall not be obliged to await the comments of DMRC or the Consultant on the Design submitted pursuant hereto beyond the periods set forth in sub-Articles (d) and (e) above.

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

14.3 Within 90 (ninety) days of the COD, the Concessionaire shall furnish DMRC with "as built" drawings reflecting the Airport Metro Express Line as actually designed, engineered and constructed. The "as built" drawings shall include, without limitation, updated versions of all drawings submitted as part of the Design, as well as an "as built" survey illustrating the layout of the Airport Metro Express Line and setback lines, if any, of the buildings and structures forming part of Project Facilities.

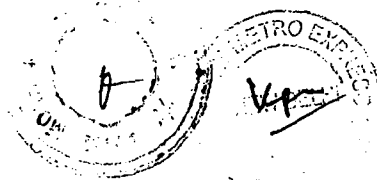


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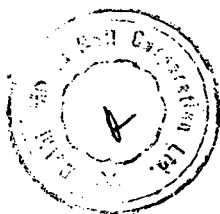
**ARTICLE 15**  
**MONITORING AND SUPERVISION OF CONSTRUCTION**

- 15.1 The Concessionaire shall, before commencement of construction of the Concessionaire's Works:
- (a) submit to DMRC with due regard to Project Completion Schedule as set forth in Schedule 'H' and Scheduled Project Completion Date, its detailed supply, construction/installation, commissioning and testing time schedule and shall formulate and provide CPM/PERT charts for the completion of the said activities; and
  - (b) have requisite organisation and designate and appoint a Project manager and such other managers, officers and representatives as it may deem appropriate to supervise the Concessionaire's Works and to deal with the DMRC Representative and be responsible for all necessary exchanges of information required pursuant to this Agreement.
- 15.2 During the Construction Period, the Concessionaire shall furnish to DMRC and the Consultant monthly progress reports of actual progress of the Construction Works comprised in the Project and shall give all such other relevant information as may be required by DMRC and/or the Consultant.
- 15.3 The Consultant shall inspect the Concessionaire's Works periodically but at least once a fortnight during the Construction Period and make out an Inspection Report of such inspection (the "Inspection Report"). It shall send a copy of its Inspection Report to DMRC and the Concessionaire. The Concessionaire shall take necessary action to remedy the lapses, if any, stated in the Inspection Report for ensuring compliance with the provisions of this Agreement. Such inspection or submission of Inspection Report by the Consultant shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 15.4 For the purposes of determining that Concessionaire's Works are being undertaken in accordance with the Specifications and Standards, the Consultant shall require the Concessionaire to carry out such Tests at such time and frequency and in such manner as may be necessary in accordance with the Specifications and Standards for quality assurance. The Concessionaire shall with due diligence carry out, or cause to be carried out, all such tests in accordance with the instructions of the Consultant and furnish the results of such tests forthwith to the Consultant. The Concessionaire shall promptly carry out such remedial measures as may be necessary to cure the defects or deficiencies, if any, indicated in such test results and furnish a report to the Consultant in this behalf.
- 15.5 If the Consultant or DMRC shall reasonably determine that the rate of progress of the implementation of the Concessionaire's Works is such that the Project Completion is not feasible on or before the Scheduled Project Completion Date by the Concessionaire, it shall so notify the Concessionaire about the same and the Concessionaire shall within 15 (fifteen) days thereof notify the DMRC and the Consultant about the steps it proposes to take to expedite progress and the period within which it shall achieve COD.

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- 15.6 (a) Upon recommendation of the Consultant or suo-moto DMRC may, by written notice, require the Concessionaire to suspend forthwith the whole or any part of the Concessionaire's Works if in the reasonable opinion of the DMRC such work is being carried on in a manner which threatens the safety of the works or of the users of the Project.
- (b) The Concessionaire, shall upon instructions of the DMRC pursuant to sub-Article (a) above suspend the Concessionaire's Works or any part thereof for such time and in such manner as may be specified by DMRC and subject to sub-Article (c) below, the costs incurred during such suspension to properly protect and secure the Concessionaire's Works or such part thereof as is necessary in the opinion of the Consultant ("Preservation Costs"), shall be borne by the Concessionaire.
- (c) If the suspension pursuant to Sub-Article (a) above, is caused by:
- (i) any reason other than default or breach of this Agreement by the Concessionaire including breach of any of the obligations of the Concessionaire under this Agreement, the Preservation Costs shall be borne by the Concessionaire;
  - (ii) reason of default or breach of this Agreement by DMRC the Preservation Costs shall be borne by DMRC; or
  - (iii) reason of any Force Majeure Event, the Preservation Costs shall be borne by the Concessionaire save and except to the extent otherwise expressly provided in Article 26.
- (d) If suspension of the Concessionaire's Works is for reasons not attributable to the Concessionaire, the Consultant shall determine any extension to the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period, to which the Concessionaire is reasonably entitled and shall notify DMRC accordingly. DMRC shall extend the Project Completion Schedule, the Scheduled Project Completion Date and the Concession Period in accordance with the recommendations of the Consultant. It is expressly agreed that any such extension shall be limited to a maximum period in such a manner that the COD is not later than the 15th day of September 2010. Both Concessionaire and DMRC confirm that time is the essence for the completion of Project as per Project Completion Schedule and both the Parties agree to cooperate with each other for completion of the Project strictly as per schedule.



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**ARTICLE 16**  
**COMMERCIAL OPERATION**

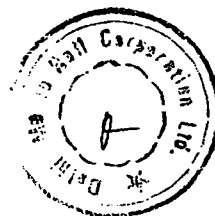
**16.1 Project Completion occurs when:**

- (a) In the opinion of the Commissioner for Rail Safety, as evidenced by his issuing a written clearance for the same, the Project Systems are capable of safe and reliable commercial operation by the Concessionaire; and
- (b) the Consultant has verified the readiness of the Concessionaire's personnel (or those of the O&M Contractor, if and to the extent applicable) to operate and maintain the Project Systems.

On satisfaction of these two conditions the Consultant shall issue the Completion Certificate or Provisional Certificate, as the case may be, in the relevant form given in Schedule 'K'. The COD shall be the date stated by the Consultant in the Completion Certificate or the Provisional Certificate, as the case may be, in accordance with the provisions of Article 17.

- 16.2** The Project shall only be deemed to be ready for use by the public when the Completion Certificate or the Provisional Certificate is issued under this Agreement and the Concessionaire shall not levy and collect any Fare from any passenger carried until it has received such Completion Certificate or the Provisional Certificate.
- 16.3** The Concessionaire guarantees that the Project Completion shall be achieved not later than the Scheduled Project Completion Date of the 31st day of July 2010 or such revision to this date as may be made in accordance with the provisions of this Agreement.
- 16.4** If the Project Completion is not achieved by the Scheduled Project Completion Date for any reason other than conditions constituting Force Majeure or for reasons attributable to DMRC or any Governmental Agency, the Concessionaire shall pay to DMRC as Damages for delay in the achievement of the COD, an amount calculated at the rate of 0.5% (point five per cent) of the Performance Security per day of delay upto 15<sup>th</sup> September 2010. Thereafter the amount of Damages for the delay shall be 1% (one percent) of the Performance Security per day of delay.
- 16.5** If the COD does not occur within 2 (two) months from the Scheduled Project Completion Date, DMRC shall be entitled to Terminate this Agreement in accordance with the provisions of Sub-Article 29.2 and the Concessionaire shall not be entitled to any damage whatsoever in case of delay on its account.

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ARTICLE 17  
TESTS

- 17.1 The Concessionaire shall engage the services of such Independent Assessors as the Commissioner of Metro Rail Safety may require to certify that any or all of the Project Systems are ready and capable for safe operation.
- 17.2 All Tests shall be conducted in accordance with Schedule 'J', the Specifications and Standards, and the Applicable Laws and Applicable Permits, or as required by the Independent Assessor. DMRC shall designate a DMRC Representative to witness and observe the Tests. All Tests shall be held in accordance with the schedule notified by the Concessionaire to the Independent Assessor, the Consultant and the DMRC Representative, who may either witness the Tests themselves or designate their representatives for this purpose, if they choose.
- 17.3 The Consultant shall monitor the results of the Tests to determine the compliance of the Airport Metro Express Line with the Specifications and Standards. The Concessionaire shall provide copies of all Test data including detailed Test results to the Consultant and DMRC.
- 17.4 At least 30 (thirty) days prior to the likely completion of the Project, the Concessionaire shall notify the Consultant and DMRC of the same and shall give notice of its intent to conduct any final Tests. The Concessionaire shall give to the Consultant and the DMRC at least 15 (fifteen) days' prior notice of the actual date on which it intends to commence the Tests and at least 10 (ten) days' prior notice of the commencement date of any subsequent Tests. The Consultant shall have the right to suspend or delay any Test if it is reasonably anticipated or determined during the course of the Test that the performance of the Project or any part thereof does not meet the Specifications and Standards.
- 17.5 The Concessionaire shall provide certificates from an Independent Assessor for the design and Tests of the Project Systems such that the Project can be safely and reliably placed in commercial operations. The Consultant shall be of the opinion that all parts of the Project have been completed, including passing all Tests not required or reviewed by the Independent Assessor, then the Consultant shall forthwith issue to the Concessionaire and DMRC a Completion Certificate in the form set forth in Schedule 'K'.
- 17.6 If the Independent Assessor shall certify the Tests of the Project Systems to be successful and that the Project can be legally, safely and reliably placed in commercial operations, even though certain works or things forming part thereof are not yet complete and/or Tests not required or reviewed by the Independent Assessor have not been passed (including, if applicable, any conditions made by the Commissioner of Metro Rail Safety in his written clearance), then the Consultant may, at the request of the Concessionaire, issue a provisional certificate of completion ("Provisional Certificate") substantially in the form set forth in Schedule 'K'. In such an event such Provisional Certificate shall have appended thereto a list of outstanding items signed jointly by the Consultant and the Concessionaire ("Punch List"). All Punch List items shall be completed by the Concessionaire within 90 (ninety) days of the date of issue of such Provisional Certificate. Subject to payment of Damages equal to Rs.200,000 (Rs. Two hundred thousand) per week or part thereof on account of any delay beyond the aforesaid period of 90 (ninety) days, the Concessionaire shall be entitled to a further period of upto 60 (sixty) days for completion of Punch List items. Upon completion of all Punch List items to the satisfaction of the Consultant, the Consultant shall issue the



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Completion Certificate to the Concessionaire. Failure to complete the Punch List items in the manner set forth in this Sub-Article 17.6 shall entitle DMRC to Terminate this Agreement in accordance with the provisions of Sub-Article 29.2.

- 17.7 If the Consultant certifies to DMRC and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate because of events or circumstances which excuse the performance of the Concessionaire's obligations in accordance with this Agreement and as a consequence thereof the Tests could not be held or had to be suspended, the Concessionaire shall re-schedule the Tests and hold the same as soon as reasonably practicable.
- 17.8 Upon receipt of a report from the Independent Assessor and/or the Consultant, or after conducting its own review or inspection, if DMRC is not satisfied with the results of any Tests, it shall within 7 (seven) days thereof notify the Concessionaire of its reasons to conclude that the Completion Certificate should not be issued, in which case the Concessionaire shall promptly take such action as will achieve such satisfaction. Such procedure shall be repeated as necessary after rectification and remedy of reasons/ causes by the Concessionaire on account of which the Tests were unsuccessful, until the Completion Certificate or Provisional Certificate has been issued in accordance with this Agreement by the Consultant.
- 17.9 The Concessionaire shall bear all the expenses relating to Tests under this Agreement.
- 17.10 In the event that DMRC retains the services of it own technical advisor in addition to the Independent Assessor, the Concessionaire and the Independent Assessor shall coordinate with DMRC appointed technical advisor and provide all documentation requested.

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## ARTICLE 18 CHANGE OF SCOPE

18.1 DMRC may, notwithstanding anything to the contrary contained in this Agreement, require provision of such additional works and services which are not included in the Scope of the Project as contemplated by this Agreement ("Change of Scope"). Any such Change of Scope shall be made in accordance with the provisions of this Article 18. It is understood by both the Parties that such Change in Scope shall be of nature that it does not adversely affect the COD. All such changes shall be made by DMRC by an order (the "Change of Scope Order") issued in accordance with the procedure set forth in this Article 18.

### 18.2 Procedure for Change of Scope

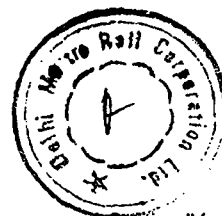
- (a) DMRC shall whenever it determines that a Change of Scope is necessary it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "Change of Scope Notice").
- (b) upon receipt of such Change of Scope Notice, the Concessionaire shall with due diligence provide to DMRC and the Consultant such information as is necessary together with preliminary documentation in support of:
  - (i) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the work is required to be carried out before COD, and
  - (ii) the cost to the Concessionaire of complying with such Change of Scope Notice (including, without limitation, material and labour cost information furnished in accordance with the current schedule of rates applicable to the works assigned by DMRC to its contractors, including the premium on such rates).
  - (iii) the options suggested for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time for the implementation thereof including a detailed breakdown by work classifications. Provided, however, that the costs of providing such information shall be reimbursed to the Concessionaire by DMRC to the extent such costs are certified to be reasonable by the Consultant.
- (c) If DMRC desires, after receipt of information set forth in sub-Article (b) to proceed with the Change of Scope, it shall convey the desired option to the Concessionaire by issuing a Change of Scope Order and thereupon the Parties shall make good faith efforts to mutually agree upon the costs and time for implementing of the same. Upon reaching an agreement relating to such costs and time, DMRC shall issue a written confirmation of the Change of Scope Order and thereupon the Concessionaire shall proceed with performance of such order. In the event, the Parties are unable to agree, DMRC may, by issuing a confirmation in writing of such Change of Scope Order, require the Concessionaire to proceed with the performance of the Change in Scope Order pending resolution of such dispute.



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- 18.3 A change of Scope Order will be effective and binding upon issuance of a confirmation of such Change of Scope Order by DMRC. Notwithstanding a dispute regarding cost and time for implementation of such Change of Scope Order, the Concessionaire shall proceed with the performance of such Change of Scope Order promptly following DMRC's confirmation pursuant to Sub-Article 18.2(c). Pending resolution of such dispute, DMRC shall pay to the Concessionaire an amount equal to the costs and at such time(s) that are certified by the Consultant to be reasonable with final adjustments to be made in accordance with the resolution of dispute under the Dispute Resolution Procedure.
- 18.4 All claims by the Concessionaire pursuant to this Article 18 shall be supported by such documentation as is reasonably sufficient for DMRC to determine the accuracy thereof, including invoices from Contractors and subcontractors and certification of such claims by the Statutory Auditors.

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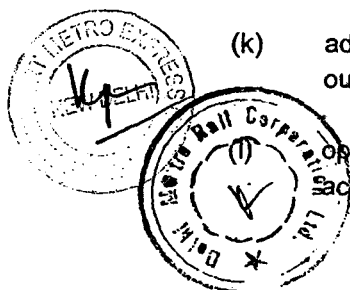


**ARTICLE 19**  
**OPERATION AND MAINTENANCE**

19.1 During the Operation Period, the Concessionaire shall operate and maintain the Project by itself, or through O&M Contractors in accordance with this Agreement and, if required, shall modify, repair or otherwise make improvements to the Project to comply with Schedule L and Specifications, Standards and other requirements set forth in this Agreement, Applicable laws and Applicable Permits, and manufacturer's guidelines and instructions with respect to rail systems, and more specifically:

- ✓ (a) provide suitably trained personnel for O & M activities at all times
- (b) permitting safe, smooth and uninterrupted train service during normal operating conditions;
- (c) charging, collecting and retaining the Fares in accordance with this Agreement;
- (d) minimizing disruption to operations in the event of accidents or other incidents affecting the safety and use of the Airport Metro Express Line by providing a rapid and effective response and maintaining liaison procedures with emergency services. In case of disruption of services, the Concessionaire shall ensure to transfer all "Checked In" passenger and luggage to the airport within shortest possible time and by reasonable means at no extra cost to the passengers.
- ✓ (e) undertaking routine maintenance including prompt repairs of any wear or damage found;
- ✓ (f) carrying out periodic preventive maintenance to Project Assets including but not limited to track, rolling stock and operating systems;
- ✓ (g) undertaking major maintenance such as track replacement, repair to structures, signaling and communication systems, overhauling of rolling stock, traction system, other equipments, etc;
- (h) preventing with the assistance of concerned law enforcement agencies unauthorised entry to and exit from the Project;
- (i) preventing with the assistance of the concerned law enforcement agencies encroachments on the Project and preserve the right of way of the Project;
- (j) maintaining a public relations unit following best practices model to interface with and attend to suggestions from users of the Project, the media, Government Agencies, and other external agencies; and
- (k) adherence to the safety, health and environmental standards and requirements set out in Schedule 'S'.

operations and maintenance of all Project Assets diligently and efficiently and with accordance with the best industry practices;



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- (m) maintaining punctuality and reliability in operating the Project;
- (n) maintaining a high standard of cleanliness and hygiene on or about the Project;

## **19.2 Operations and Maintenance Manual**

19.2.1 The Concessionaire shall, in consultation with the Consultant, prepare not later than 180 (one hundred and eighty) days before the Scheduled Project Completion Date, the operations and maintenance manual (the "Operations and Maintenance Manual") detailing the Concessionaire's procedures for the operation of the Project under normal, degraded and emergency conditions and for its regular and periodic maintenance, and shall ensure and procure that at all times during the Operations Period the Project is maintained in such a way, it complies with the Specifications and Standards and the operations and maintenance requirements set forth in Schedule L. The Concessionaire shall supply, two months before the COD, 10 (ten) copies of the Operations and Maintenance Manual to DMRC and 3 (three) copies to the Consultant.

19.2.2 The Operations and Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Asset, including replacement thereof, such that its overall condition conforms to the best possible operating requirement.

19.2.3 Further, the Operations and Maintenance Manual shall also prescribe five year operating benchmarks to be achieved by the Concessionaire in consistence with the provisions of this Agreement.

## **19.3 Maintenance Programme**

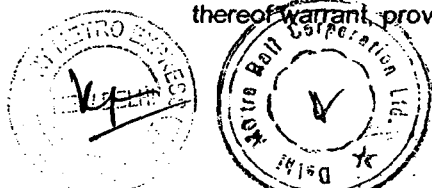
Not later than forty five (45) days before the beginning of each Accounting Year, the Concessionaire, during the Operation Period shall in consultation with the Consultant prepare and provide to DMRC, its proposed programme of preventive, urgent and other scheduled maintenance subject to the minimum maintenance requirements set forth in Operations and Maintenance Manual and in Schedule 'L' necessary to maintain the Project at all times in conformity with the Specifications and Standards (the "Maintenance Programme"). Such Maintenance Programme shall include but not be limited to the following:

- (a) intervals and procedures for the carrying out of inspection of all elements of the Project;
- (b) criteria to be adopted for deciding maintenance needs;
- (c) preventive maintenance schedule;
- (d) intervals at which the Concessionaire shall carry out periodic maintenance;
- (e) intervals for major maintenance and the scope thereof; and
- (f) line closures schedule for each type of maintenance (length and time).

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- 19.4 Maintenance shall include replacement of equipment/consumables, horticultural maintenance and upkeep of all Project Assets in good order and working condition. Maintenance shall not include the extension of any rail tracks, stations, depot or Railway Systems unless part of the Project.
- 19.5 The Concessionaire shall keep the stations, access areas and other public areas in a clean, tidy and orderly condition free of litter and debris.
- 19.6 During the Operations Period, the Concessionaire shall carry out upgrading of the Project Systems and/or modifications to the Project where such modification is necessary for the Project to operate in conformity with the Specifications and Standards prescribed under this Agreement or any subsequent revision thereto. Provided, that the Concessionaire shall notify DMRC of the proposed modifications along with details thereof at least fifteen days before commencing work on such modifications and shall reasonably consider such suggestions as DMRC may make within 15 (fifteen) days of receipt of such details by DMRC.
- 19.7 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances and the procedures specified in Articles 19.3 to 19.6 shall apply mutus mutandis to such modifications.
- 19.8 Safety, Vehicle Breakdown and Accident**
- 19.8.1 The Concessionaire shall ensure safe conditions for the Users and in the case of unsafe conditions, track damage, vehicle breakdowns and accidents, the Concessionaire shall follow the relevant operating procedures, which shall include the removal of obstruction and debris expeditiously. Such procedures shall be in accordance with Applicable Laws, Applicable Permits and provisions of this Agreement.
- 19.8.2 The Concessionaire shall ensure that any interruption of operations is remedied without delay.
- 19.8.3 The Concessionaire shall ensure that the safety, health and environment standards and requirements specified in Volume III Schedule 'S' are strictly complied with. Compliance with Schedule 'S' will be monitored by the Consultant and a breach by the Concessionaire of its obligations in respect of this Schedule identified by the Consultant shall be notified immediately and is required to be cured within 24 hours of its notification notwithstanding inspection, reporting procedures outlined elsewhere in this Agreement.
- 19.8.4 Each Safety incident determined by the Safety Review Board (Volume III Schedule R), to be chargeable to the Concessionaire as a breach of this Agreement, shall lead to the award of a penalty point. A total of 5 (five) penalty points in any continuous period of 365 days shall constitute a Material Breach of this Agreement and the provisions of Article 29 shall apply.
- 19.9 Emergency De-commissioning**
- 19.9.1 If, in the reasonable opinion of the Concessionaire there exists an emergency which warrants the immediate decommissioning and closure to passenger use of whole or any part of the Project, the Concessionaire shall be entitled to de-commission and close the whole or the relevant part of the Project to traffic for so long as such emergency and the consequences thereof warrant, provided however that such emergency decommissioning will be notified to

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DMRC promptly. DMRC may issue directions to the Concessionaire for dealing with such situations and the Concessionaire shall abide by such directions.

- 19.9.2 The Concessionaire shall re-commission the Project or the affected part thereof as quickly as practicable after the circumstances leading to its de-commissioning and closure have ceased to exist.
- 19.9.3 Save as otherwise permitted under Sub-Article 19.8, the Concessionaire shall not close any part of the Project for undertaking maintenance or repair works except with the prior written approval of the DMRC (which may delegate its authority to the Consultant). Such approval shall be sought by the Concessionaire through a written request to be made at least 7 (seven) days before the proposed closure, and shall be accompanied by particulars indicating the nature and extent of repair works, the area and/or section required to be closed, and the period of closure. The Concessionaire shall also furnish particulars indicating the minimum time required for completing such repair works. Within 5 (five) days of receiving such request, DMRC or the Consultant, as the case may be, shall grant permission with such modifications as it may deem necessary. Upon receiving such permission, the Concessionaire shall be entitled to close the area and/or section in accordance with such permission and re-open it within the period stipulated in such permission.
- 19.10 For any closure of all or part of the Project to passenger use during the first Operations Year, the Concessionaire shall pay Damages to DMRC calculated at the rate of 0.1% (zero point one percent) per day or part thereof of the average daily Fare of that Section until such time the Section has been re-opened for passenger use.
- 19.11 Save and except as otherwise be expressly provided in this Agreement, if the Project or any part thereof shall suffer any loss or damage during the Concession Period, from any cause whatsoever, the Concessionaire shall, at its cost and expense rectify and remedy such loss or damage forthwith in a manner so as to make the Project conform in every respect to the Specifications and Standards, quality and performance as prescribed by this Agreement.
- 19.12 In the event the Concessionaire does not maintain and/ or repair the Project or a part thereof upto and in accordance with the Specifications and Standards and/or in accordance with the Maintenance Programme or the Operations and Maintenance Manual, and shall have failed to commence remedial works within 30 (thirty) days of receipt of notice in this behalf from DMRC or the Consultant, or the O&M Inspection Report, as the case may be, DMRC shall, without prejudice to its rights under this Agreement, including Termination thereof, be entitled to undertake the repair and maintenance of the Project at the risk and cost of the Concessionaire and to recover the same from the Concessionaire. In addition to recovery of the aforesaid cost of repair and maintenance by DMRC, a sum equal to 25% (twenty five per cent) of such cost shall also be recovered by DMRC from the Concessionaire as Damages. DMRC shall have the right and the Concessionaire hereby expressly grants to DMRC the right to recover the same directly from the Escrow Account and for that purpose the Concessionaire hereby expressly authorises DMRC and hereby gives irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of DMRC under this Sub-Article.
- 19.13 In the event DMRC does not exercise its option to undertake the required repair and maintenance after expiry of the 30 (thirty) days period stipulated in Sub-Article 19.12 it shall

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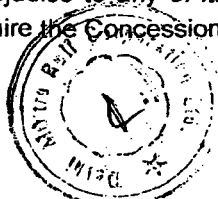
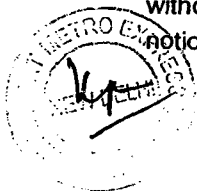
recover Damages from the Concessionaire for default in operating and maintaining the Project in conformity with this Agreement. Such Damages shall be payable after the aforesaid period of 30 (thirty) days and until the default is cured. The amount of Damages shall be calculated for each day of default at the higher of the following, namely (a) at the higher of 0.5% (zero point five percent) of average daily Fare and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Consultant. Recovery of such Damages shall be without prejudice to the rights of DMRC under this Agreement, including the right of Termination thereof.

- 19.14 If the Concessionaire commences any works for curing any defects or deficiencies in the Project, it shall complete such works expeditiously in accordance with the provisions of this Agreement. If such works are carried out in a manner that results in a delay of more than 30 (thirty) days as compared to the time required in accordance with good industry practice, DMRC shall recover Damages from the Concessionaire as if a default had occurred under Sub-Article 19.13.
- 19.15 The Damages set forth in Article 19.13 may be assessed and specified forthwith by the Consultant, provided that DMRC may in its discretion recover a smaller sum as Damages, if DMRC determines that breach has been cured promptly and that the Concessionaire is otherwise in compliance of its obligations under such Agreement. The Concessionaire shall pay such smaller Damages, and even if it contests the Damages, the decision of Managing Director, Delhi Metro Rail Corporation shall be final and binding and the Dispute Resolution Procedure shall not apply.
- 19.16 The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project is not available for passenger use after the COD on account of any of the following for the duration thereof:
- (a) an event of Force Majeure;
  - (b) measures taken to ensure the safe use of the Project except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement;
  - (c) unsafe conditions directly caused by a defect in the DMRC Works which was not apparent at the time of handing over of the Section; or
  - (d) compliance with a request from DMRC or the directions of any Governmental Agency the effect of which is to close all or any part of the Project.

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

**19.17 Overriding powers of DMRC**

- 19.17.1 If in the reasonable opinion of DMRC, the Concessionaire is in material breach of its obligations under this Agreement and, in particular, the Maintenance Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, DMRC may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take



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reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

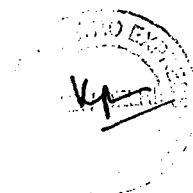
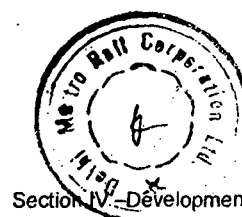
19.17.2 In the event that the Concessionaire, upon notice under Article 19.17, fails to rectify or remove any hardship or danger within a reasonable period, DMRC may exercise overriding powers under this Article 19.17 and take over the performance of any or all of the obligations of the Concessionaire to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by DMRC shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by DMRC in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and DMRC shall be entitled to recover them from the Concessionaire in accordance with the provisions of Articles 19.13 to 19.17 along with the Damages specified therein.

19.17.3 In the event of a national emergency, civil commotion or any other act specified in Article 26.7, DMRC may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary; provided that the exercise such control over the Project and give such directions to the Concessionaire as deemed necessary, provided that the exercise of such overriding powers of DMRC shall be of no greater scope and of no longer duration than is reasonably required which caused the exercise of such powers by DMRC.

19.18 DMRC as Operator:

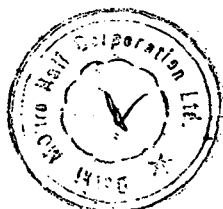
DMRC is already operating the phase I of the Delhi Metro Project and shall be doing so for Phase II of the Project which is under implementation. DMRC has established their own Operating Organisation with proper training facilities. DMRC may take up the Train Operation of the Project, if so desired by the Concessionaire, at a fee as mutually agreed. However the Concessionaire shall be responsible for all the maintenance and other operational activities which are not taken up by DMRC as required for the Project.

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**ARTICLE 20**  
**MONITORING AND SUPERVISION DURING OPERATION**

- ✓ 20.1 The Concessionaire shall undertake periodic inspection of the Project to determine the condition of the Project, including its compliance or otherwise with the Operations and Maintenance Manual, the Maintenance Programme, Specifications and Standards and the maintenance required and shall submit reports of such inspection ("Maintenance Reports") to DMRC and the Consultant. The scope and timing of such periodic inspections shall be scheduled in the Operations and Maintenance Manual.
- 20.2 DMRC shall review the Maintenance Reports and inspect the Project at least once a month during the Operations Period and make out an Inspection Report of such inspection (an "O&M Inspection Report"). DMRC shall send a copy of its O&M Inspection Report to the Concessionaire. The Concessionaire shall within 30 (thirty) days of the receipt of the O&M Inspection Report remedy the defects and deficiencies, if any, set forth in such O&M Inspection Report and submit its report in respect thereof to DMRC within the said 30 (thirty) days period (an "O&M Inspection Compliance Report"). Where the remedying of such defects or deficiencies is likely to take more than 30 (thirty) days in accordance with , the Concessionaire shall undertake the works in accordance with such practice and submit progress reports of such works every fortnight. The O&M Inspection Report may also require the Concessionaire to undertake such tests as may be specified by DMRC for the purpose of determining that the Project is at all times in conformity with the Specifications and Standards. The Concessionaire shall undertake such Tests without any delay and furnish a copy of the results thereof to DMRC along with a written statement specifying in reasonable detail the measures, if any, that it proposes to undertake for curing the defaults or deficiencies indicated in such results. Such inspection or submission of O&M Inspection Report by DMRC or submission of O&M Inspection Compliance Report by the Concessionaire shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.
- 20.3 DMRC may inspect the Project at any time for a review of the compliance by the Concessionaire with its maintenance obligations under this Agreement.
- 20.4 The Concessionaire shall furnish to DMRC within 7 (seven) days of completion of each calendar month during the Operations Period, a statement of Revenues in the form set forth in Schedule 'M' (the "Monthly Revenue Statement").

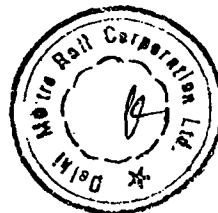


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**ARTICLE 21  
PASSENGER COUNTING**

- 21.1 For the purpose of determination and/or verification of the actual usage of the Project, DMRC shall, in addition to inspection of Concessionaire's records, be entitled to undertake passenger counts at such frequency and in such manner as DMRC may deem appropriate. The Concessionaire shall provide all facilities and assistance as DMRC may reasonably require for undertaking such passenger counts.
- 21.2 If the data collected from passenger counting undertaken pursuant to Sub-Article 21.1 demonstrates that actual usage is more than the usage according to the records of the Concessionaire, the actual usage for the purposes of this Agreement shall be deemed to be the passenger numbers as determined by such DMRC passenger sampling pursuant to this Article 21.
- 21.3 The Concessionaire may, in consultation with DMRC, commission an independent agency to conduct the passenger counts under this Article. The report of such agency shall be furnished to DMRC for such use as it may deem fit.
- 21.4 In the event of any dispute arising as to the actual usage on the Project DMRC appointed independent auditors' decisions shall be final.

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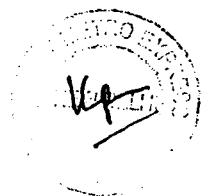
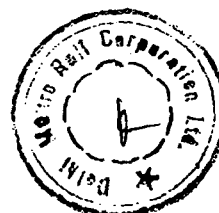
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**SECTION - V**  
**FINANCING ARRANGEMENTS**

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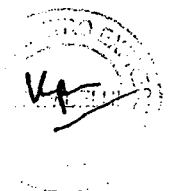
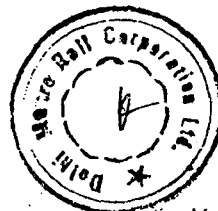




**ARTICLE 22**  
**FINANCIAL CLOSE**

- 22.1 The Concessionaire shall provide to DMRC a copy of the Financing Package furnished by it to the prospective Senior Lenders. As and when such Financing Package is agreed with the Senior Lenders, with or without modifications, and such agreement is confirmed by the signing of the agreed Financing Package by both the Concessionaire and the Senior Lenders, a copy of the same shall be furnished by the Concessionaire to DMRC forthwith.
- 22.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire covenants with DMRC that it shall achieve Financial Close within 180 (one hundred eighty) days from the date of LOA. If the Concessionaire shall fail to achieve Financial Close within the said 180 (one hundred eighty) days period, the Concessionaire shall be entitled to a further period of 60 (sixty) days subject to an advance weekly payment by the Concessionaire to DMRC of a sum of Rs.100,000 (Rupees one hundred thousand) per week or part thereof for any delay beyond the said 180 (one hundred eighty) day period, as Damages on account of such delay in achieving Financial Close within the said 180 (one hundred eighty) day period by the Concessionaire.
- 22.3 It is expressly understood by both the Parties that in view of time constrained nature of the Project, DMRC shall require the Concessionaire to start the work from the Start Date (30 days from the issue of Letter of Acceptance) from the Concessionaire's Equity portion of the capital even before the Financial Close is achieved and the Concessionaire shall be under obligation to start the work and continue the same to the satisfaction of DMRC. In the most unlikely event of the Concession being Terminated before achieving the Financial Close, the Concessionaire shall be entitled to payment of actual expenditure incurred on the work as specifically ordered by DMRC.
- 22.4 Notwithstanding anything to the contrary contained in this Agreement, DMRC shall be entitled to terminate this Agreement forthwith, without being liable in any manner whatsoever to the Concessionaire, by a communication in writing to the Concessionaire pursuant to Sub-Article 29.2 if the Concessionaire shall have failed to pay in advance the Damages to DMRC under and in accordance with Sub-Article 22.2 above.
- 22.5 Notwithstanding anything to the contrary contained in this Agreement, if the Financial Close shall not occur within 240 (Two hundred forty eighty) days including the extended period as set forth in Sub-Article 22.2 above, all rights, privileges, claims and entitlements, if any, of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties.
- 22.6 Upon Termination of this Agreement under Sub-Articles 22.4 or 22.5, DMRC shall be entitled to encash the Performance Security and appropriate the proceeds thereof as Damages. On the other hand, the Concessionaire shall be entitled for fair value of the actual work executed by it under specific orders of DMRC pending Financial Close.

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## ARTICLE 23

### ESCROW ACCOUNT

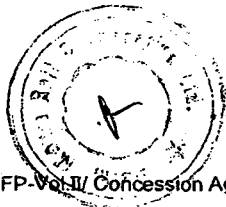
#### 23.1 Opening of Escrow Account and Deposits into Escrow Account

On Financial Close, (in any case not later than 30 days of financial close) the Concessionaire shall open and establish the Escrow Account with a Bank (the "Escrow Bank") and all funds constituting the Financing Package for meeting the Concessionaire's capital costs shall be credited to such Escrow Account. During Operations Period all Fare and Non-Fare Revenues collected by the Concessionaire shall be exclusively deposited therein. In addition, any Fares collected by DMRC in exercise of its rights under this Agreement during the Concession Period and all disbursements or payments by DMRC to the Concessionaire pursuant hereto shall also, subject to the rights of deductions and appropriations therefrom of DMRC under this Agreement, be deposited by DMRC in the Escrow Account.

#### 23.2 Disbursements from Escrow Account

23.2.1 The Concessionaire shall give, at the time of the opening of the Escrow Account, irrevocable instructions by way of an Escrow Agreement substantially in form set forth in Schedule 'Q' (the "Escrow Agreement") to the Escrow Bank instructing, inter alia, that the deposits into the Escrow Account shall, subject to Sub-Article 23.2.3, be appropriated in the following order every month and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out therefrom in the month when due unless otherwise expressly provided in the instruction letter:

- (i) All taxes due and payable by the Concessionaire;
- (ii) All expenses in connection with and relevant to the Concessionaire's Works by way of payment to the EPC Contractor and such other persons as may be specified in the Financing Documents;
- (iii) O&M Expenses subject to the ceiling, if any set forth in the Financial Documents
- (iv) All License Fee, Concession Fee and Revenue Share due to DMRC from the Concessionaire under this Agreement;
- (v) Any payments and Damages due and payable by the Concessionaire to DMRC pursuant to this Agreement; and
- (vi) The whole or part of the expense on repair work including Fees collection expenses incurred by DMRC on account of exercise of any of its rights under this Agreement provided DMRC certifies to the Escrow Bank that DMRC had incurred such expenses in accordance with the provisions of this Agreement;
- (vii) Monthly proportionate provision of Debt Service Payments due in an Accounting Year and payment of Debt Service Payments in the month when due;
- (viii) Debt service in respect of Subordinate Debt ;
- (ix) Any reserve requirements required to be settled in terms of Financial Documents



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- (x) Balance in accordance with the instructions of the Concessionaire.

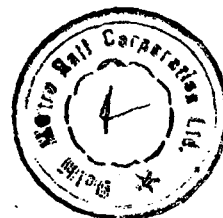
23.2.2 The Concessionaire shall not in any manner modify the order of payment specified in Sub-Article 23.2.1 except with the prior written approval of DMRC.

23.3 Notwithstanding anything to the contrary contained in the Escrow Agreement and subject to the provisions contained in Sub-Articles 30.5 and Article 32, upon Termination of this Agreement, all amounts standing to the credit of the Project Escrow Account shall be appropriated and dealt with in the following order:

- (a) all Taxes due and payable by the Concessionaire;
- (b) all Concession Fees due and payable to DMRC under this Agreement;
- (c) all accrued Debt Service Payment;
- (d) any payments and Damages due and payable by the Concessionaire to DMRC pursuant to this Agreement, including Termination claims;
- (e) all accrued O&M Expenses;
- (f) any other payments required to be made under this Agreement; and
- (g) balance, if any, on the instructions of the Concessionaire.

23.4 The instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Sub-Article 23.3 have been discharged.

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## ARTICLE 24 INSURANCE

### 24.1 Insurance during the Construction Period:

Throughout the Construction Period the Concessionaire shall effect and maintain, or cause to be effected and maintained, in the joint names of DMRC and the Concessionaire and at no cost to DMRC, such insurances, including but not limited to insurance of the Concessionaire's Works and such Sections of the DMRC Works as he has been given use of and liability to third parties, up to such maximum sums as may be required under and in accordance with the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable. The Concessionaire shall also effect and maintain such insurance as may be necessary for mitigating the risks that may devolve on DMRC as a consequence of any act of omission by the Concessionaire during the Construction Period. For the avoidance of doubt, the level of Insurance to be maintained by the Concessionaire after the repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of Insurance prior to such repayment of Senior Lenders' dues.

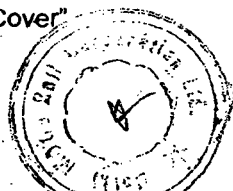
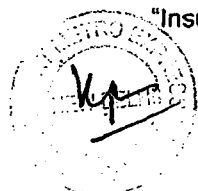
### 24.2 Insurance during the Operations Period:

Not later than 4 months prior to the anticipated COD, the Concessionaire shall obtain and maintain in the names of DMRC and the Concessionaire and the O&M Contractor and at no cost to DMRC such insurance as may be required under any of the Financing Documents, Applicable Laws and such insurance as the Concessionaire may reasonably consider necessary or desirable during the Operations Period in respect of the Project and its operations. Provided, however, the level of insurance to be maintained shall, at all times, cover the full replacement costs of both the DMRC Works and the Concessionaire's Works and possible liability to Users and other third parties.

### 24.3 Without prejudice to the provisions contained in Article 24.2, the Concessionaire shall, during the Operation Period, maintain Insurance cover including but not limited to the following:

- i. Loss, damage or destruction of the Project Assets, including assets handed over by DMRC to the Concessionaire, at replacement value;
- ii. Comprehensive third party (including users) liability insurance including injury to or death of personnel of DMRC or others who may enter the Project area;
- iii. The Concessionaire's general liability arising out of the Concession;
- iv. Liability to third parties for goods or property damage;
- v. Workman's compensation insurance;
- vi. Any other insurance required to protect the Concessionaire, its officers and employees (including that of the Contractor, if any), including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (v) above.

### 24.4 For the sake of brevity, the aggregate of the maximum sums insured under the insurance taken out by the Concessionaire pursuant to this Article 24 are herein referred to as the "Insurance Cover"



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**24.5 Evidence of Insurance Cover:**

All insurance obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurer or reinsurers, and on terms acceptable to DMRC and to the Senior Lenders. Within thirty days of obtaining any insurance cover, the Concessionaire shall furnish to DMRC, copies of certificates of insurance, copies of the insurance policies signed by an authorised representative of the insurer and copies of all premia payment receipts in respect of such insurance received from each insurance carrier, and such insurance will not be cancelled, changed or not renewed until the expiration of at least 45 (forty five) days after written notice of such cancellation, change of non-renewal has been received by DMRC.

**24.6 Remedy on Failure to Insure:**

If the Concessionaire shall fail to effect and keep in force the insurance for which it is responsible pursuant hereto, DMRC shall have the option to keep in force any such insurance, and pay such premia and recover the costs thereof from the Concessionaire.

**24.7 Waiver of Subrogation:**

All insurance policies supplied by the Concessionaire shall include a waiver of any right of subrogation of the insurers thereunder against, inter alia, DMRC, and its assigns, subsidiaries, Affiliates, employees, insurers and underwriters and of any right of the insurers of any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy.

**24.8 Concessionaire Waiver:**

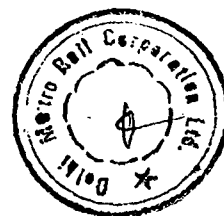
The Concessionaire hereby further releases, assigns and waives any and all rights of recovery against, inter alia, the DMRC, and its Affiliates, subsidiaries, employees, successors, permitted assigns, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any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

**24.9 Application of Insurance Proceeds:**

Unless otherwise required by the Financing Documents the proceeds from all insurance claims except those covering life and injury shall be paid to the Concessionaire by credit to the Escrow Account and the Escrow Agent shall, subject to its obligations under the Financing Documents, and notwithstanding anything contained in Article 23, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Airport Metro Express Line.

**24.10 In the case of Termination of the Concession Agreement for what so ever reason it may be, the Concessionaire will assign all the insurance covers, benefits accruing there from and the insurance claims to DMRC.**

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Handwritten signature or initials.

## ARTICLE 25 ACCOUNTS AND AUDIT

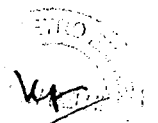
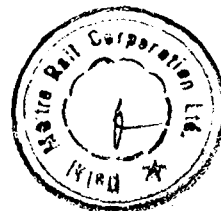
- 25.1 The Concessionaire shall maintain full accounts of all Fares and Non-Fare Revenues derived/collected by it from and on account of use of the Airport Metro Express Line and of O&M Expenses and other costs paid out of the Project Escrow Account and shall provide copies of the said accounts duly audited and certified by the Concessionaire's Statutory Auditors within 120 (one hundred twenty) days of the close of each Accounting Year to which they pertain, during the subsistence of this Agreement. Such audited accounts shall form the basis of various payments by either Party under this Agreement. The Concessionaire shall also furnish, within one week of its publication, a certified copy of the audited accounts and annual report published by the Concessionaire under the Applicable Laws.
- 25.2 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 out of the mutually agreed list of 10 (ten) independent and reputable firms of Chartered Accountants in India (the "List of Chartered Accountants"). Subject to a 30 days notice to DMRC and the replacement Statutory Auditors being appointed from the List of Chartered Accountants, the Concessionaire may terminate the appointment of any Statutory Auditor appointed in accordance with this Article. The fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 25.3 On or before the thirtieth day of May each Year, the Concessionaire shall provide for the preceding Accounting Year a statement duly audited by its Statutory Auditors giving summarised information on (i) the passenger count for each class of passenger using the Airport Metro Express Line for each station and liable for payment of Fares therefore, (ii) Fares charged and the amount of Fares received, (iii) Non-Fare Revenues, and (iv) such other information as DMRC may reasonably require.
- 25.4 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 from the List of Chartered Accountants (the "Additional Auditor") to audit and verify all those matters, expense, costs, realisations and things which the Statutory Auditors of the Concessionaire, are required to do, undertake or certify pursuant to this Agreement.
- 25.5 DMRC shall have the right to appoint for the duration of the Operations Period as Concurrent Auditor a firm of Chartered Accountants from the List of Chartered Accountants (the "Concurrent Auditor") who shall undertake concurrent audit of the Concessionaire during the Operations Period. The charges and expenses of such Concurrent Auditor shall be borne by the DMRC.
- 25.6 In the event of their being any difference between the finding of the Additional Auditor or the Concurrent 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.



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**SECTION – VI  
FORCE MAJEURE**

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## ARTICLE 26 FORCE MAJEURE

26.1 Force Majeure" shall mean any event or circumstance or combination of events or circumstances that has a Material Adverse Effect on either Party (the "Affected Party") but only if and to the extent that such events and circumstances are not within the Affected Party's reasonable control.

26.2 The Following circumstances and events shall constitute an event or circumstance of Force Majeure to the extent that they or their consequences satisfy the above requirements:

- a) the effect of natural elements or other acts of God, including but not limited to any storm, flood, drought, lightening, earthquake, cyclone or other natural disaster;
- b) fire, accident, breakage of facilities or equipment, structural collapse or explosion which the Party claiming to have been subject to Force Majeure demonstrates to have been attributable to a cause other than
  - i. inherent defects of any equipment, or
  - ii. circumstances within the reasonable control of the Affected Party or its contractors;
- c) epidemic or quarantine
- d) acts of war (whether declared or undeclared), sabotage, terrorism or acts of public enemy (, civil disturbances, revolution, rebellion or insurrection, exercise of military or usurped power or any attempt at usurpation of power;
- e) radioactive contamination or ionization radiation
- f) events of strikes, work to rule actions, go-slows or similar labour related problems caused in whole or in part by agitation or unrest except where such events which are site specific or attributable to the Party claiming relief.

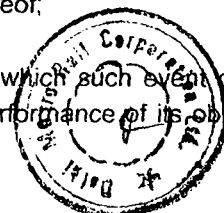
### 26.3 Duty to Report

26.3.1 A Party claiming to be affected by an event of Force Majeure shall notify the other Party in writing of the occurrence of the event of Force Majeure as soon as reasonably practicable, and in any event, within 15(Fifteen) days after the Affected Party knew, or ought reasonably to have known, of its occurrence and the probable material effect that the event of Force Majeure is likely to have on the performance of its obligations under this Agreement.

26.3.2 Any notice pursuant to this Article 26.3.1 shall include full particulars of:

- a) the nature and extent of the event of Force Majeure which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such event of Force Majeure is having or will have on the Affected Party's performance of its obligations under this Agreement; and

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- c) the measures which the Affected Party is taking or proposes to take, to alleviate the impact of such event Force Majeure ; and  
any other information the Affected Party wishes to present in support of its claim.

26.3.3 For so long as the Affected Party continues to claim to be affected by such event of Force Majeure, it shall continue to provide to the other Party, written reports on every alternate day, containing information as required by this Article 26 and such other information as the other Party may reasonably request the Affected Party to provide.

26.3.4 Any party claiming to have been affected by an event of Force Majeure shall not be entitled to any relief unless it has complied with all the provisions of Articles 26.3.1, 26.3.2, and 26.3.3 above.

#### 26.4 Excuse from Performance of Obligations

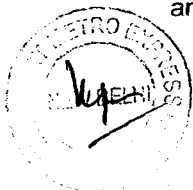
An Affected Party who is rendered wholly or partially unable to perform its obligations under this Agreement shall be excused from performance of such of its obligations as are directly and materially adversely affected by the event of Force Majeure, provided however that:

- a) an obligation to make any payment or meet any financial obligation shall not be excused on account of an event of Force Majeure, and
- b) the suspension of performance of its obligations by the Affected Party shall be of no greater scope and of no longer duration than is reasonably necessitated by the event of Force Majeure, and
- c) the Affected Party shall continue to make all reasonable efforts to mitigate or limit the damage to the other Party arising out of or as a result of the existence or occurrence of such event of Force Majeure and to cure the same with due diligence; and
- d) 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.
- e) any Insurance Proceeds shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure event unless otherwise required by the Lenders.

#### 26.5 No Liability for Other Losses, Damages, etc.

Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of the occurrence or existence of any event of Force Majeure or the exercise by it of any right pursuant to this Article 26.

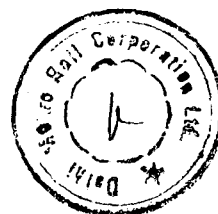
26.6 In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such dispute shall be finally settled in accordance with the Dispute Resolution Procedure, provided however that the burden of proof as to the occurrence or existence of such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



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**SECTION – VII**  
**SUSPENSION AND TERMINATION**

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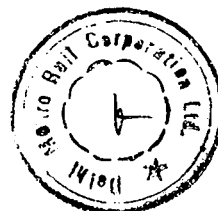
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**ARTICLE 27**  
**MATERIAL BREACH AND SUSPENSION**

- 27.1 If the Concessionaire shall be in Material Breach of this Agreement DMRC, shall be entitled in its sole discretion and without prejudice to its other rights and remedies under this Agreement including its right of Termination hereunder, to (i) suspend all or any of the rights of the Concessionaire under this Agreement including the Concessionaire's right to collect and appropriate all Fares and Non-Fare Revenues, and (ii) exercise the rights of the Concessionaire under this Agreement itself or authorise any other person to exercise the same during such suspension. Such suspension by DMRC shall be by a communication in writing to the Concessionaire and shall be effective forthwith upon the issue thereof to the Concessionaire. Any Fares and/or Non-Fare Revenues collected by or on behalf of DMRC during such suspension shall be deposited in the Escrow Account to the exclusion of the Concessionaire. Provided, however, that the period of such suspension under this Article 27 shall not exceed 120 (one hundred twenty) days, provided that upon written request from the Concessionaire and the Senior Lenders to DMRC it may increase to 180 days.
- 27.2 Subject to Sub-Article 27.1, DMRC shall have the right to utilise the proceeds of Fares and Non-Fare Revenues for meeting the costs incurred by DMRC to remedy and rectify the cause of such suspension and for defraying the O&M Expenses incurred during such suspension period. Provided, however, that if the Concessionaire is making diligent efforts to remedy and rectify such cause, then DMRC shall allow the Concessionaire reasonable time and opportunity for such remedy or rectification.
- 27.3 The suspension of the rights of the Concessionaire by DMRC pursuant to Sub-Article 27.1 above shall be revoked by DMRC forthwith upon the Concessionaire having remedied the Material Breach during such suspension period to the satisfaction of DMRC unless in the meantime this Agreement has been terminated by DMRC in accordance with Article 29.
- 27.4 At any time during the period of suspension under this Article 27, the Concessionaire may in writing notify to DMRC that it does not intend to cure the breach or default that had caused such suspension. Within 7 (seven) days of receipt of such notice, DMRC shall terminate this Agreement as if a Material Breach of this Agreement had occurred on account of a Concessionaire Event of Default.

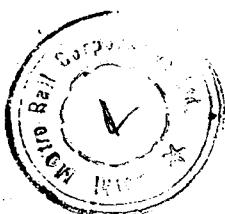
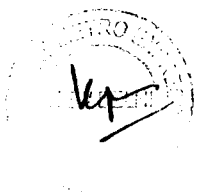
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**ARTICLE 28**  
**COMPENSATION FOR BREACH OF AGREEMENT**

- 28.1 In the event of Concessionaire being in Material Breach of this Agreement and such breach is cured before Termination, the Concessionaire shall pay to DMRC as compensation, all direct additional costs suffered or incurred by DMRC arising out of such breach by the Concessionaire, in one lump sum within 30 (thirty) days of receiving the demand or at the Concessionaire's option in 3 (three) equal semi-annual installments with interest an annualised rate of SBI PLR plus 2% (two per cent).
- 28.2 In the event of DMRC being in Material Breach of this Agreement and such breach is cured before Termination, DMRC shall pay to the Concessionaire as compensation, all direct additional costs suffered or incurred by the Concessionaire arising out of such breach by DMRC, in one lump sum within 30 (thirty) days of receiving the demand or at DMRC's option in 3 (three) equal semi-annual installments with interest an annualised rate of SBI PLR plus 2% (two per cent).



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## ARTICLE 29 TERMINATION

### 29.1 Termination for the Concessionaire Event of Default

#### 29.1.1 Concessionaire Event of Default

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

- (i) The Concessionaire fails to achieve Financial Close in accordance with the provisions of Article 22;
- (ii) The Concessionaire fails to achieve any Project milestone other than Scheduled Project Completion Date within the period set forth in Schedule 'H' and fails to cure such default within a period of 90 (ninety) days from the date of its occurrence;
- (iii) The Concessionaire is in Material Breach of this Agreement;
- (iv) The Concessionaire commits default in complying with any of the terms and conditions of this Agreement, save and except those defaults specifically identified or in respect of which Cure Period has been expressly provided in this Agreement, and fails to remedy or rectify the same within the period provided in a notice in this behalf from DMRC which shall:
  - (a) require the Concessionaire to remedy the breach or breaches referred to in such notice within 1 (one) month (or such longer period as may be agreed by the DMRC at its absolute discretion); or
  - (b) permit the Concessionaire to put forward within 15 days of such notice a reasonable programme for the remedying of the breach or breaches, such programme to specify in reasonable detail the manner in which such breach or breaches is or are proposed to be remedied and the latest date by which it is proposed that such breach or all such breaches shall be remedied.
- (v) The Concessionaire creates any Encumbrance, charges or lien in favour of any person save and except as otherwise expressly permitted under Article 32;
- (vi) The shareholding of the Consortium Members or of the Lead Member falls below the minimum then prescribed under Sub-Article 10.5 and the Concessionaire does not cure such default within 90 (ninety) days of its occurrence;
- (vii) The transfer, pursuant to law of either (a) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or (b) all or material part of the assets or undertaking of the Concessionaire except where such transfer in the reasonable opinion of DMRC does not affect the ability of the Concessionaire to perform, and the Concessionaire has the financial and technical capability to perform, its material obligations under the Project Agreements;

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- (viii) A resolution is passed by the shareholders of the Concessionaire for the voluntary winding up of the Concessionaire;
- (ix) The Concessionaire is adjudged bankrupt or insolvent or if a trustee or receiver is appointed for the Concessionaire or for any of its property that has a material bearing on the Project;
- (x) Any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction provided that, as part of such amalgamation or reconstruction, the property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements, and provided that:
  - (a) the amalgamated or reconstructed entity has the technical capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (b) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Financial Close; and
  - (c) each of the Project Agreements remains in full force and effect;
- (xi) The Concessionaire is in Material Breach of this Agreement or any of the Project Agreements resulting in Concessionaire's incapacity to perform under this Concession Agreement to the satisfaction of DMRC;
- (xii) An event of default of the Concessionaire under any of the Financing Documents has occurred or any of the Senior Lenders has recalled its loan under any of the Financing Documents;
- (xiii) The Concessionaire abandons the operations of the Airport Metro Express Line for more than 15 (fifteen) consecutive days without the prior consent of DMRC, provided that the Concessionaire shall be deemed not to have abandoned such operation if such abandonment was (i) as a result of Force Majeure Event and is only for the period such Force Majeure is continuing, or (ii) is on account of a breach of its obligations by DMRC.
- (xiv) The Concessionaire repudiates this Agreement or otherwise evidences an intention not to be bound by this Agreement;
- (xv) The Concessionaire suffers an execution being levied on any of its assets/ equipment causing a Material Adverse Effect on the Project and allows it to be continued for a period of 15 (fifteen) days; or



- (xvi) The Concessionaire has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days.

29.1.2 Save and except as otherwise provided in Sub-Article 29.2, and without prejudice to any other right or remedy which DMRC may have in respect thereof under this Agreement, upon the occurrence of any breach or default by the Concessionaire under this Agreement including any Concessionaire Event of Default, DMRC shall be entitled to terminate this Agreement by a communication in writing (the "Termination Notice") to the Concessionaire if the Concessionaire has failed to cure such breach or default within the period provided for the same in this Agreement provided that before issuing the Termination Notice, DMRC shall by a notice in writing inform the Concessionaire of its intention to issue the Termination Notice (the "Preliminary Notice") and grant 15 (fifteen) days time to the Concessionaire to make its representation, if any, against such intended Termination Notice and shall after the expiry of said 15 (fifteen) day period whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

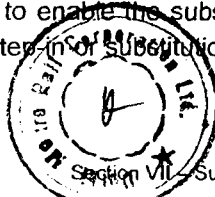
29.1.3 Subject to Sub-Article 29.2, the following shall apply in respect of cure of any of the defaults and/or breaches of this Agreement.

- (i) The Cure Period shall commence from the date on which a notice in writing is delivered by DMRC to the Concessionaire asking the latter to cure the breach or default specified in such notice.
- (ii) The Cure Period provided in this Agreement shall not relieve the Concessionaire from liability for Damages caused by its breach or default;
- (iii) The Cure Period shall not in any way be extended by any period of suspension under this Agreement;
- (iv) If the cure of any breach by the Concessionaire requires any reasonable action by Concessionaire that must be approved by DMRC or the Consultant hereunder the applicable Cure Period (and any liability of the Concessionaire for damages incurred) shall be extended by the period taken by DMRC or the Consultant to accord their required approval.

29.2 Notwithstanding anything to the contrary contained in this Agreement, in the event of the Concessionaire being in default under any of the provisions hereof expressly providing for Termination under or in accordance with this Sub-Article 29.2, DMRC shall be entitled to terminate this Agreement forthwith by issuing a Termination Notice to the Concessionaire and upon issue of such Termination Notice by DMRC this Agreement shall stand terminated forthwith.

29.3 Notwithstanding anything to the contrary contained in this Agreement, in the event of a Termination Notice being issued by DMRC the Senior Lenders may exercise the rights of step-in or substitution as provided in the Substitution Agreement to be entered into among the Concessionaire, DMRC and Senior Lenders in the form set forth in Schedule 'U'. Provided, however, that in the event of such step-in or substitution, DMRC shall allow an additional Cure Period of 90 (ninety) days prior to Termination to enable the substituting entity to cure any breach or default subsisting on the day of such step-in or substitution. On the exercise of

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the rights substitution in accordance with the Substitution Agreement and with this Sub-Article 29.3, the entity substituting the Concessionaire shall thereafter be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations under this Agreement as if it were the Concessionaire

- 29.4 Upon Termination by DMRC on account of a Concessionaire's event of Default during the Operations Period, DMRC shall pay to the Concessionaire by way of Termination Payment an amount equal to 80% (eighty percent) of the Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire's Default occurring prior to COD.

**29.5 Termination for DMRC Event of Default.**

- 29.5.1 The Concessionaire may after giving 90 (ninety) days notice in writing to DMRC terminate this Agreement upon the occurrence and continuation of any of the following events (each a "DMRC Event of Default"), unless any such DMRC Event of Default has occurred as a result of Concessionaire Event of Default or due to a Force Majeure Event.

- (i) DMRC is in breach of this Agreement and such breach has a Material Adverse Effect on the Concessionaire and DMRC has failed to cure such breach or take effective steps for curing such breach within 90 (ninety) days of receipt of notice in this behalf from the Concessionaire;
- (ii) DMRC repudiates this Agreement or otherwise evidences an irrevocable intention not to be bound by this Agreement;
- (iii) GoI or GNCTD or any Governmental Agency have by an act of commission or omission created circumstances that have a Material Adverse Effect on the performance of its obligations by the Concessionaire and have failed to cure the same within 90 (ninety) days of receipt of notice by DMRC in this behalf from the Concessionaire;
- (iv) DMRC has delayed any payment that has fallen due under this Agreement if such delay exceeds 90 (ninety) days.

- 29.5.2 Upon Termination by the Concessionaire on account of DMRC Event of Default, DMRC shall pay to the Concessionaire, by way of Termination Payment, an amount equal to

- a) Debt Due;
- b) 130% of the Adjusted Equity; and
- c) Depreciated Value of the Project Assets, if any, acquired and installed on the Project after the 10th anniversary of the COD.

- 29.5.3 Upon Termination on expiry of the Concession Period by efflux of time, no Termination Payment shall be due and payable to the Concessionaire what so ever, provided that in the event, any Project Asset is acquired and installed on the Project within five years of the cessation of the Concession by normal efflux of time, with prior written consent of DMRC, then a Termination Payment equal to the Depreciated Value of such Project Assets shall be made by DMRC to the Concessionaire.

**29.6 Termination in Case of Persisting Force Majeure**

If a Force Majeure Event subsists for a continuous period of 120 (one hundred and twenty) days or more, 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, save as provided in this sub-article.

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Upon Termination of this Agreement pursuant to this, DMRC shall pay to the Concessionaire as Termination Payment an amount equal to:

- a) 100% of the Debt Due;
- b) Depreciated Value of the Project Assets, if any, acquired and installed in the Project after the 10th anniversary of the COD.

29.7 Upon Termination of this Agreement for any reason whatsoever, DMRC shall:

- (a) take possession and control of Airport Metro Express Line forthwith;
- (b) take possession and control forthwith of any materials, construction plant, implements, stores etc. on or about the Site;
- (c) restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Airport Metro Express Line; and/or
- (d) succeed upon election by DMRC without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreement as DMRC may in its discretion deem appropriate and shall upon such election be required to compensate such contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date DMRC elects to succeed to the interests of the Concessionaire as aforesaid. All sums claimed by such Contractors as being due and owing for work and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors and DMRC shall in no way or manner be liable or responsible for such sums.

**29.8 Termination Payments:** The Termination Payment pursuant to this Agreement shall become due and payable to the Concessionaire by DMRC within thirty days of a demand being made by the Concessionaire with the necessary particulars duly certified by the Statutory Auditors. If DMRC fails to disburse the full Termination Payment within 30 (thirty) days, the amount remaining unpaid shall be disbursed along with interest at an annualised rate of SBI PLR plus two per cent for the period of delay on such amount.

**29.9 Mode of Payment:** Payment of compensation of costs by DMRC pursuant to this Article 29 shall be made by way of credit to the Escrow Account and such payment shall constitute valid discharge of DMRC's obligations for Termination Payment hereunder.

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

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**ARTICLE 30**  
**DIVESTMENT OF RIGHTS AND INTERESTS**

30.1 Upon Termination of this Agreement, the Concessionaire shall comply with the following:

- (a) notify to DMRC forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith actual or constructive possession of the Airport Metro Express Line free and clear of all Encumbrances and execute such deeds, writings and documents as may be required by the DMRC for fully and effectively divesting the Concessionaire of all of the rights, title and interest of the Concessionaire in the Airport Metro Express Line and conveying the Airport Metro Express Line free of any charge or cost to DMRC; and
- (c) comply with the Divestment Requirements set out in Sub-Article 30.2.

30.2 Upon Termination of this Agreement, the Concessionaire shall comply and conform to the following Divestment Requirements in respect of the Airport Metro Express Line:

- (a) all Project Assets including the track, structure and equipment shall have been cured of all defects and deficiencies as necessary so that the Airport Metro Express Line is compliant with the Specifications and Standards set forth in this Agreement;
- (b) all instruments, controls and alarms shall be in working condition;
- (c) the Concessionaire delivers relevant records and reports pertaining to the Airport Metro Express Line and its design, engineering, construction, operation, and maintenance including all operation and maintenance records and programmes and manuals pertaining thereto and complete as built drawings on the Divestment Date;
- (d) the Concessionaire executes such deeds of conveyance, documents and other writings as the DMRC may reasonably require to convey, divest and assign all the rights, title and interest of the Concessionaire in the Airport Metro Express Line free from all Encumbrances absolutely and free of any charge or tax unto the DMRC or its Nominee; and
- (e) the Concessionaire complies with all other requirements as may be prescribed under Applicable Laws to complete the divestment and assignment of all the rights, title and interest of the Concessionaire in the Airport Metro Express Line free from all Encumbrances absolutely and free of any charge or tax to DMRC or its nominee.

30.3 In order to assist DMRC, or a replacement to the Concessionaire appointed by the Senior Lenders in accordance with the Substitution Agreement, with assuming operations in the event that the Concessionaire ceases to operate and maintain the Airport Metro Express Line for whatever reason, the Concessionaire will be responsible for preparing and updating a Handover Package. The Handover Package must include details of all the matters listed in Schedule 'T'. The Concessionaire must update the Handover Package regularly and in the same manner as a competent provider of similar services would do and promptly provide an electronic and 2 hard copies of the updated Handover Package to DMRC. For each version of the Handover Package provided to DMRC, the Concessionaire must provide written confirmation to the DMRC that the Handover Packages contains the information required

under Schedule 'T'. Where the Concessionaire decides that the Handover Package is not required to be updated in a 6 month period on the basis that it is already up to date, the Concessionaire must advise DMRC in writing within 20 Business Days after the end of each 6 month period that the Handover Package is up to date. The Concessionaire must also retain copies of the most recent version of the Handover Package and provide these to any new operator nominated by DMRC or appointed as the replacement by the Senior Lenders in accordance with the Substitution Agreement.

- 30.4 Not earlier than 3 (three) months before the expiry of the Concession Period but not later than 30 (thirty) days before such expiry, or in the event of earlier Termination of this Agreement, immediately upon but not later than 15 (fifteen) days from the date of issue of Termination Notice, DMRC shall verify, in the presence of a representative of the Concessionaire, compliance by the Concessionaire with the Divestment Requirements set forth in Sub-Article 30.2 in relation to the Airport Metro Express Line and, if required, cause appropriate tests to be carried out at the Concessionaire's cost for determining the compliance therewith. If any shortcomings in the Divestment Requirements are found by either Party, it shall notify the other of the same and the Concessionaire shall rectify the same at its cost. The provisions of Article 31 shall apply *mutatis mutandis* in relation to repair or curing of defects under this Article 30.
- 30.5 Upon the Concessionaire conforming to all Divestment Requirements and handing over actual or constructive possession of the Airport Metro Express Line to DMRC or a person nominated by DMRC in this regard, DMRC shall issue a certificate substantially in the form set forth in Schedule 'V' (the "Vesting Certificate") which will have the effect of constituting evidence of divestment of all rights, title and lien in the Airport Metro Express Line by the Concessionaire and their vesting in DMRC pursuant hereto. Issue of the Vesting Certificate shall not be unreasonably withheld by DMRC. The divestment of all rights, title and lien in the Airport Metro Express Line shall be deemed to be complete on the date when all the Divestment Requirements have been fulfilled or the Vesting Certificate has been issued, whichever is earlier, it being expressly agreed that any defect or deficiency in any Divestment Requirement shall not in any manner be construed or interpreted as restricting the exercise of any rights by DMRC or its nominee on or in respect of the Airport Metro Express Line on the footing as if all Divestment Requirements have been complied with by the Concessionaire.
- 30.6 Notwithstanding anything to the contrary contained in this Agreement, any Termination Payments made by DMRC into the Escrow Account shall not be withdrawn therefrom for any purpose whatsoever until the Vesting Certificate has been issued by DMRC under this Article.

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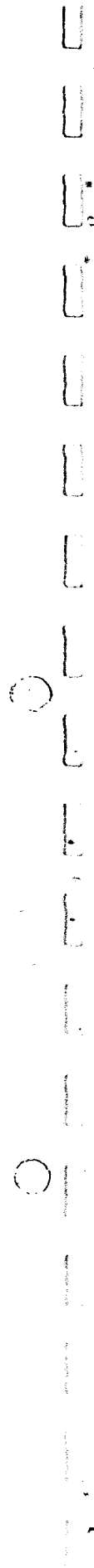
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**SECTION – VIII  
MISCELLANEOUS**

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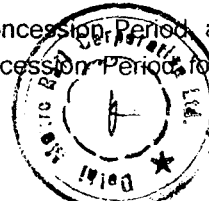


**ARTICLE 31**  
**TRANSFER PROCEDURES ON EXPIRY OF THE CONCESSION**

Not less than 30 months nor more than 36 months prior to the expiry of the Concession Period, the Concessionaire and DMRC shall conduct a joint inspection (the "Initial Inspection") of the Project.

- 31.1 Within 90 days after the completion of the Initial Inspection, the Concessionaire shall provide to DMRC a report on the condition of the Project and a notice setting out the Concessionaire's proposals as to the renewal works required to comply with the Divestment Requirements.
- 31.2 DMRC may, within 90 days after receipt of the notice from the Concessionaire in accordance with Sub-Article 31.2, by notice to the Concessionaire object to the proposals giving details of the grounds for such objection and shall give the Consultant's proposals in respect of the renewal works.
- 31.3 If no agreement is reached between the Concessionaire and DMRC within 30 days of receipt of such notice, then either the Concessionaire or DMRC may refer the matter to the Disputes Resolution Procedure.
- 31.4 Upon agreement, or determination in accordance with the Disputes Resolution Procedure as to what the scope of the renewal works shall be, the Concessionaire shall carry out the renewal works at its own cost.
- 31.5 Not less than 9 months nor more than 12 months prior to the expiry of the Concession Period, the Concessionaire and DMRC shall conduct a joint inspection (the "Second Inspection") of all elements of the Airport Metro Express Line (whether or not the Renewal Works have been carried out).
- 31.6 Within 30 days after the completion of the Second Inspection, the Concessionaire shall provide to DMRC a report on the condition of the Airport Metro Express Line and a notice setting out any revisions or additions to the renewal works required in order to ensure compliance with the Divestment Requirements.
- 31.7 DMRC may, within 30 days after receipt of the notice from the Concessionaire in accordance with Sub-Article 31.7, by notice to the Concessionaire object to the proposed revisions giving details of the grounds for such objection and shall give the Consultant proposals in respect of such matters.
- 31.8 If no agreement is reached between the Concessionaire and the Consultant within 30 days of receipt of such notice, then either the Concessionaire or the Consultant may refer the matter to the Dispute Resolution Procedure.
- 31.9 Upon agreement, or determination in accordance with the Disputes Resolution Procedure as to what the scope of remaining renewal works may be, the Concessionaire shall carry out the renewal works (as so revised) at its own cost.
- 31.10 From the date which is 2 years prior to the expiry of the Concession Period, a sum equal to the Fares realisable during the last two years of the Concession Period for a passenger

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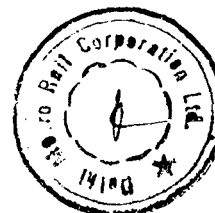
- 31.11 volume equal to that actually recorded in the year immediately ended, or such higher sum estimated by DMRC as being the estimated cost for Renewal Works shall, notwithstanding anything to the contrary contained in this Agreement, be retained in the Escrow Account, provided that if a Bank Guarantee of an equivalent sum in the form and content acceptable to DMRC has been furnished by the Concessionaire to DMRC, no such retention shall be made.
- 31.12 If, following the Second Inspection, it is agreed or determined that no renewal works are required, then within 14 days of such agreement, 50% of the sums retained in accordance with Sub-Article 31.11 shall be released from the Escrow Account to the Concessionaire.
- 31.13 Within 14 days after the issue of the Vesting Certificate issued in accordance with Article 30 the sums retained in accordance with Sub-Article 31.11 shall be released from the Escrow Account to the Concessionaire.

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**ARTICLE 32  
ASSIGNMENTS AND CHARGES**

- 32.1 Subject to Sub-Articles 32.3 and 32.4, this Agreement shall not be assigned by the Concessionaire save and except with prior consent in writing of DMRC, which consent DMRC shall be entitled to decline without assigning any reason whatsoever.
- 32.2 Subject to Sub-Article 32.3, the Concessionaire shall neither create nor permit to subsist any encumbrance over or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreements to which Concessionaire is a party except with prior consent in writing of DMRC, which consent DMRC shall be entitled to decline without assigning any reason whatsoever.
- 32.3 The restraint set forth in Sub-Articles 32.1 and 32.2 shall not apply to:
- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Airport Metro Express Line;
  - (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and those covered by the Substitution Agreement and their related documents of title arising or created in the ordinary course of business of the Airport Metro Express Line and as security only for indebtedness to the Senior Lenders under the Financing Documents and/or for working capital arrangements for the Airport Metro Express Line;
  - (c) assignment of rights, title and interest to or in favour of the Lenders pursuant to and in accordance with the Substitution Agreement in respect of financing by the Senior Lenders under the Financing Documents for the Project; and
  - (d) liens or encumbrances required by any Applicable Law.
- 32.4 Notwithstanding anything to the contrary contained in this Agreement DMRC may assign any of its rights and benefits and/or obligations under this Agreement pursuant to any direction of GOI or by operation of law or in the course of its own business.

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**ARTICLE 33  
CHANGE IN LAW**

- 33.1 If as a result of Change in Law, the Concessionaire suffers an increase in costs or reduction in net after tax return or other financial burden, the aggregate financial effect of which exceeds Rs.10 million (Rupees ten million) in any Accounting Year, the Concessionaire may notify DMRC and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been no such Change in Law resulting in such cost increase, reduction in return or other financial burden as aforesaid. Upon notification by the Concessionaire as aforesaid, the Parties shall meet as soon as reasonably practicable but no later than 30 (thirty) days and either agree on amendments to this Agreement or on alternative arrangements to implement the foregoing.
- 33.2 If, as a result of Change in Law, the Concessionaire enjoys a reduction in costs or increase in net after tax return or other financial benefit, the aggregate financial effect of which exceeds Rs.10 million (Rupees ten million) in any Accounting Year, DMRC may so notify the Concessionaire and propose amendments to this Agreement so as to put the Concessionaire in the same financial position as it would have occupied had there been so such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Upon notification by the DMRC as aforesaid, the Parties shall meet as soon as reasonably practicable, but no later than 30 (thirty) days and either agree on such amendments to this Agreement or on alternative arrangements to implement the foregoing.

Provided that if no agreement is reached as aforesaid by the Parties within 90 (ninety) days of the meeting pursuant to this Sub-Article 33.2, DMRC may by notice in writing require the Concessionaire to pay an amount that would put the Concessionaire in the same financial position it would have occupied had there been no such Change in Law resulting in such decreased cost, increase in return or other financial benefit as aforesaid. Such notice shall be accompanied by necessary particulars duly certified by the DMRC Representative. The Concessionaire shall make such payment within 15 (fifteen) days of receiving such notice or with interest an annualised rate of SBI PLR if the payment is delayed beyond such 15 (fifteen) days. If the Concessionaire shall dispute such claim of DMRC, the same shall be finally settled in accordance with the Dispute Resolution Procedure. The same will apply in case there is no agreement reached for payment delay by the Parties as stipulated above in case of any payment required to be made by DMRC to the Concessionaire regarding the change in law



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## ARTICLE 34 LIABILITY AND INDEMNITY

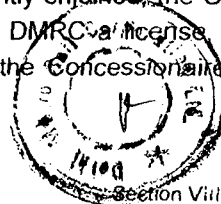
### 34.1 General Indemnity

- (a) The Concessionaire will indemnify, defend and hold DMRC harmless against any and all proceedings, actions and, third party claims (other than a claim by DMRC or GOI for loss, damage and expense of whatever kind and nature arising out of the design, engineering, construction, procurement, Operation and Maintenance of the Project or arising out of a breach by Concessionaire of any of its obligations under this Agreement except to the extent that any such claim has arisen due to DMRC Event of Default).
- (b) DMRC will, indemnify, defend and hold harmless the Concessionaire against any and all proceedings, actions, third party claims for loss, damage and expense of whatever kind and nature arising out of defect in title and/or the rights of DMRC in the land comprised in the Site adversely affecting the performance of the Concessionaire's obligations under this Agreement and/or arising out of acts done in discharge of their lawful functions by DMRC, its officers, servants, agents, subsidiaries and contractors ("DMRC Indemnified Persons") including DMRC Events of Default except to the extent that any such claim has arisen due to a negligent act or omission, breach of contract or breach of statutory duty on the part of the Concessionaire, its Subsidiaries, Affiliates, contractors, servants or agents including due to Concessionaire Event of Default.

34.2 Without limiting the generality of Sub-Article 34.1 the Concessionaire shall fully indemnify, save harmless and defend DMRC including its officers, servants, agents and subsidiaries from and against any and all loss and damages arising out of or with respect to (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits, (b) payments of taxes relating to the Concessionaire contractors, suppliers and representatives, income or other taxes required to be paid by the Concessionaire without reimbursement hereunder, or (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its contractors.

34.3 Without limiting the generality of the provisions of this Article 34, the Concessionaire shall fully indemnify, save harmless and defend the DMRC indemnified Person from and against any and all damages which the DMRC Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the suspension of the injunction or restraint order. If, in any such suit claim or proceedings, the Concessionaire's Works, or any part, thereof or comprised therein is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for DMRC a license, at no cost to DMRC, authorizing continued use of the infringing work. If the Concessionaire is unable to

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secure such license within a reasonable time, the Concessionaire shall, at its own expense and without impairing the specifications and standards either replace the affected work, or part, or process thereof with non-infringing work or parts or process, or modify the same so that it becomes non-infringing.

- 34.4 In the event that either Party receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 34 (the "Indemnified Party") it shall notify the other Party ("Indemnifying Party") within 14 (fourteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, such approval not to be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim it may conduct the proceedings in the name of the Indemnified Party subject the Indemnified Party being secured against any costs involved to its reasonable satisfaction.

**34.5 Defense of Claims**

- 34.5.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder and their reasonable costs and expenses shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the person indemnified in respect of loss to the full extent provided by this Article 34, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding liabilities, payments and obligations at its expense and through counsel of its choice provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure, the loss to be indemnified hereunder to the extent so compromised or settled.

- 34.5.2 If the Indemnifying Party has exercised its rights under Sub-Article 34.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

- 34.5.3 If the Indemnifying Party exercises its rights under Sub-Article 34.4 then the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party, when and as incurred, unless:

- (i) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (ii) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or

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

provided that if sub-Articles (ii), (iii) or (iv) shall be applicable, counsel for the Indemnified Party shall have the right to direct the defence of such claim, action, suit or proceeding on behalf of the Indemnified Party and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

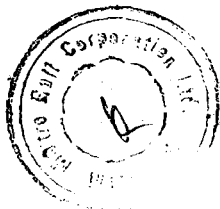
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**ARTICLE 35  
RIGHTS AND TITLE OVER THE SITE**

- 35.1 The Concessionaire shall have exclusive rights to the use of the Site in accordance with the provisions of this Agreement and for this purpose it may regulate the entry and use of the Project by third parties.
- 35.2 The Concessionaire shall allow access to, and use of the Site for telegraph lines, electric lines or such other public purposes as DMRC may specify. Where such access or use causes any damage to the Project and consequent financial loss to the Concessionaire, it may seek compensation or damages from such user of the Site as per Applicable Laws.
- 35.3 For the purposes of the Concessionaire claiming tax depreciation, the property representing the capital investment made by DMRC shall be deemed to be acquired and owned by DMRC and not by the Concessionaire.
- 35.4 The Concessionaire shall not sublet the whole or any part of the Site save and except as may be expressly set forth in this Agreement provided however that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.



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## ARTICLE 36 DISPUTE RESOLUTION

### 36.1 Amicable Resolution

- (a) Save where expressly stated to the contrary in this Agreement, any dispute, difference or controversy of whatever nature howsoever arising under, out of or in relation to this Agreement including incompleteness of the Project between the Parties and so notified in writing by either Party to the other (the "Dispute") in the first instance shall be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Sub-Article (b) below.
- (b) In the event of any Dispute between the Parties, either Party may call upon the Consultant to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Consultant or without the intervention of the Consultant, either Party may require such Dispute to be referred to the Director, Airport Line as representative of DMRC and the Chairman of the Board of Directors as representative of the Concessionaire for amicable settlement. Upon such reference, the said two representatives shall meet not later than 7 (seven) days of the date of such request to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the said period or the Dispute is not amicably settled within 15 (fifteen) days of such meeting between the said two representatives, either Party may refer the dispute to arbitration in accordance with the provisions of Sub-Article 36.2.
- (c) If the Dispute is not resolved as evidenced by the signing of the written terms of settlement within 30 (thirty) working days of the aforesaid notice in writing or such longer period as may be mutually agreed by the Parties then the provisions of Sub-Article 36.2 shall apply.

### 36.2 Arbitration

#### 36.2.1 Dispute Due For Arbitration

Disputes or differences shall be due for arbitration only if all the conditions in Sub-Article 36.1 are fulfilled.

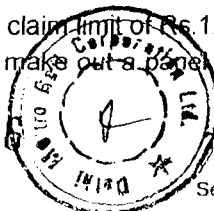
#### 36.2.2 Settlement of Disputes

Except where otherwise provided in the Contract, all disputes, whatsoever arising between the parties, arising out of touching or relating to construction, measuring, operation or effect of the Contract or the breach thereof, shall be settled by arbitration as detailed in Sub Article 36.2.3.

#### 36.2.3 Nomination of Arbitrators / Sole Arbitrator

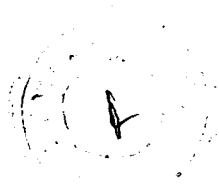
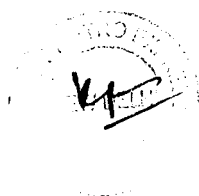
Matters to be arbitrated upon shall be referred to a sole Arbitrator where the total value of claims does not exceed Rs.1.50 millions. Beyond the claim limit of Rs.1.50 million, there shall be three arbitrators. For this purpose the DMRC will make out a panel of Engineers with the

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**ARTICLE 39**  
**GOVERNING LAW AND JURISDICTION**

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



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## ARTICLE 40 MISCELLANEOUS

### 40.1 Video Recording

During the Construction Period, the Concessionaire shall provide a video recording to DMRC every calendar quarter which will be compiled into a 3 (three) hour cassette, covering the progress of the Concessionaire's Works in that quarter. Such video recording shall be provided no later than fifteen days after the close of each quarter.

### 40.2 Waiver

Waiver by either Party of any default by other Party in the observance and performance of any provision of or obligations of or under this Agreement.

- (i) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
  - (ii) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - (iii) shall not affect the validity or enforceability of this Agreement in any manner.
- (a) Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### 40.3 Survival

Termination of this Agreement (a) shall not relieve the Concessionaire or DMRC of any obligations 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.

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

### 40.4 Entire Agreement:

This Agreement constitutes a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless expressly previously approved in writing by DMRC and executed by the person expressly authorised by a resolution of DMRC in this behalf.

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#### 40.5 Notices

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

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

Copies of all notices shall also be sent by facsimile and by registered acknowledgement due pre-paid post or courier.

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

#### 40.6 Severability

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

#### 40.7 Corrupt and Fraudulent Practices

The Concessionaire warrants that no sums, in cash or kind, have been paid or will be paid by or on behalf of the Concessionaire, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of DMRC, GOI or GNCTD in connection therewith.

#### 40.8 Language

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

#### Confidentiality

Each Party shall keep in strict confidence any information and document received by it or on its behalf from the other Party in connection with the Project, and shall not disclose such information or document in any manner otherwise than as provided for in this sub-article.

Except and only to the extent as otherwise reasonably required in order to exercise any rights afforded under this Agreement, each Party shall keep in strict confidence any information and document received by it or on its behalf in connection with the Project, and shall not disclose such information or document in any manner, other than for the purpose of



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performing its obligations under this Agreement or as required under any Laws and Regulations, however the foregoing obligations of confidentiality shall not apply to:

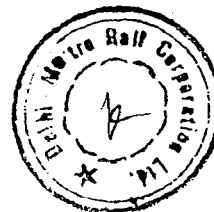
- (a) any information that is reasonably required by any Persons engaged in the fulfillment of the Concessionaire's or DMRC's obligations under this Agreement;
- (b) any information which either Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this sub-article;
- (c) any information which is reasonably required to enable a determination to be made under Article 36 (Dispute Resolution);
- (d) any information the disclosure of which is required by any Applicable Laws or other regulations (including any order of a court of competent jurisdiction), or by any Governmental Agency; and
- (e) any information required by the Senior Lenders or the Lender's Representative or by insurance advisers or insurers, but only to such extent necessary to enable their decisions to be taken.
- (f) Concessionaire shall not recruit or attempt to recruit any DMRC Employee.

**40.10 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 or any representation by either Party not contained in a binding legal agreement executed by both Parties.

**40.11 Counterparts**

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



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