

Department of Micro, Small & Medium
Enterprises & Textiles
Government of West Bengal

TEXPRO Bengal

Development of Apparel Wholesale Hub at Sector
V, Salt Lake under PPP Mode

Concession Agreement

February, 2016

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Concession Agreement

THIS CONCESSION AGREEMENT is entered into on this the _____ day of _____, 201_

BETWEEN

- 1) **The Governor of West Bengal**, represented by the ___ Secretary, Department of Micro, Small & Medium Enterprises & Textiles, having its office at _____, Kolkata, (hereinafter referred to as the "**Department/Authority**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns) of the First Part;

AND

- 2) **** **LIMITED//*** LLP**, a company / limited liability partnership (SPV) incorporated under the provisions of the Companies Act, 2013/ Limited Liability Partnership Act, 2008 and having its registered office at _____, (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Second Part;

AND

- 3) **** **LIMITED//*** LLP**, a company/limited liability partnership governed by the Companies Act, 2013/Limited Liability Partnership Act, 2008 and having its registered office at _____, (hereinafter referred to as the "**Selected Bidder/ Confirming Party**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns) of the Third Part

OR

- 4) The consortium of (i) M/s _____ having its registered office at _____ and (ii) M/s _____ having its registered office at _____, with _____ as the Lead Member (the "**Lead Member**"), in their capacity as the Confirming Parties to this Agreement (hereinafter referred to as the '**Selected Bidder(s)/Confirming Parties**' which expression shall, unless the context otherwise requires, include its/their successors and permitted assigns) of the Third Part.

(Each of the parties of the FIRST, SECOND and THIRD parts are hereinafter, as the context may admit or require, individually referred to as a "**Party**" and collectively as the "**Parties**").

WHEREAS:

- (A) The Authority had decided to develop an **Apparel Wholesale Hub at Sector V, Salt Lake** ("**Project**") spread over an area of about 3.78 acres through Public Private Partnership (PPP) on **Design, Build, Finance, Operate and Transfer ("DBFOT")** basis, in order to harness the expertise of private sector for integration of design & construction, financing and operation and maintenance of the wholesale hub.

- (B) For this purpose the Authority had invited competitive proposals from eligible bidders for implementing the Project and in response thereto received proposals from several bidders including the Selected Bidder(s) for implementing the Project.
- (C) The Authority, after evaluating the aforesaid bids, accepted the Bid submitted by the Selected Bidder and issued its Letter of Award No. dated (hereinafter called the "LOA") to the Selected Bidder requiring, *inter alia*, the execution of this Agreement within 45 (Forty Five) days of the date of issue thereof.
- (D) The Selected Bidder(s) has since promoted and incorporated the Concessionaire as a Special Purpose Vehicle ("SPV") under the Companies Act, 2013/Limited Liability Partnership Act, 2008. The Selected Bidder has requested the Authority to accept the Concessionaire as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder under the LOA, including the obligation to enter into this Agreement pursuant to the LOA for executing the Project.
- (E) The Concessionaire shall undertake the development of the Project Facilities (as defined herein after) on the Project Site comprising land admeasuring about 3.78 acres at Sector V, Salt Lake specified in Schedule X of this Agreement.
- (F) The Concessionaire shall be granted leasehold rights from the date of execution of the Lease Deed till the expiry of the Concession Period or early termination of this Agreement.
- (G) By its letter dated, the Concessionaire has also joined in the said request of the Selected Bidder(s) to the Authority to accept it as the entity, which shall undertake and perform the obligations and exercise the rights of the Selected Bidder(s) including the obligation to enter into this Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the Selected Bidder(s) for the purposes hereof.
- (H) The Department shall assist, to the extent possible, in providing any kind of needed state support by the Concessionaire either by itself or through its agencies. Notwithstanding the formation of the SPV, the Selected Bidder(s) shall continue to be bound by all the representations and commitments as made in the Bid and shall be responsible for ensuring the implementation of the Project by the SPV in the manner contemplated herein and in performance by the SPV of all its obligations contained herein and in the Bid. The Selected Bidder(s) are therefore necessary parties to the Agreement and have been joined in as a Confirming Party to this Agreement.
- (I) The Authority confirms the receipt of the Bank guarantee dated _____ for an amount of Rs. 20,00,00,000/- (Rupees Twenty Crores only) as Performance Security, for the performance of the obligations of the Concessionaire under this Agreement.
- (J) The Authority and the Concessionaire have agreed to enter into this Agreement for execution of the Project on PPP basis, subject to and on the terms and conditions set forth hereinafter.

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

1. Definitions and Interpretations

1.1 Definitions

In addition to the definitions provided elsewhere in the Agreement, 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 thereto in the Schedules.

“Actual Project Cost” means the actual capital cost incurred by the Concessionaire on the Project and/or the Project Facilities as certified by the Statutory Auditor and if the same exceeds the Total Project Cost, the amount of the Total Project Cost increased by the amount(s) approved in writing by the Authority.

“Additional Auditor” shall mean the auditor appointed by Authority, at its sole discretion. Authority has the option to appoint any firm of chartered accountants duly licensed to practice in India.

“Affected Party” shall mean the Party claiming to be affected by a Force Majeure Event in accordance with Article 14.

“Agreement” shall mean this Concession Agreement with its recitals, annexures and schedules, and includes any amendments hereto made in accordance with the provisions hereof.

“Applicable Law” shall mean all laws, brought into force and effect by Government of India or the Government of West Bengal including rules, regulations, guidelines and notifications made there under and amended from time to time and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement.

“Applicable Permits” shall mean all clearances, permits, authorizations, consents and approvals required to be obtained or maintained by the Concessionaire under Applicable Law, in connection with the construction and maintenance of the Project Facilities and Project during the subsistence of this Agreement and thereafter.

“Appointed Date” shall mean the date of the signing of this Agreement between the Concessionaire and the Authority.

“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. **“Associate”** or **“Affiliate”** 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 company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise).

“Authority” shall mean the Department of Micro, Small & Medium Enterprises & Textiles, Government of West Bengal.

“Authority’s Allocation” shall have the meaning provided in Article 9.1.1(b).

“Authority’s Allocation Land” shall mean the land underlying/attributable to the Authority’s Allocation being _____ acres and as the land underlying and attributing to the Authority’s Allocation.

“Authority Event of Default” shall have the meaning set forth in Article 15.2.

“Authority’s Representative” shall mean any such representative nominated by the Authority.

“Annual Lease Rent” shall have the meaning set forth in Schedule VIII.

“Bank” means a Scheduled Bank as defined under Section 2(e) of the Reserve Bank of India Act, 1934.

“Bank Rate” means the rate of interest specified by the Reserve Bank of India from time to time in pursuance of Section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the time being in effect.

“Book Value” shall mean the depreciated value of the Project Facilities (excluding any asset not taken over by the Authority), developed by the Concessionaire, as on the date of issue of the Termination notice and as determined by the Statutory Auditor of the Concessionaire and further verified and approved by the Authority. In the event, the value as ascertained by the Statutory Auditor is not acceptable to the Authority, the valuation of the Project Facilities shall be referred to the Additional Auditor whose valuation shall be final and binding on the Parties. The fees payable to the Additional Auditor and the cost incurred in relation to such valuation shall be borne by the Concessionaire except in case of the Authority Event of Default when the cost shall be shared equally between the Parties.

“Bid” means the documents in their entirety comprised in the bid submitted by the Selected Bidder in response to the Request for Proposal in accordance with the provisions thereof.

“Bid Security” means the security provided by the Selected Bidder to Authority along with the Bid in a sum of Rs. 150,00,000/- (Rupees One Crore Fifty Lakhs only), in accordance with the Request for Proposal, and which is to remain in force until substituted by the Performance Security.

“Built-Up Area” shall mean the portion of the Project Facilities that are capable of being leased, let out for occupation or use and shall not include the common infrastructure, common facilities and other amenities on the Project Site.

“Change in Law” shall mean the occurrence of any of the following after the date of Bid which has a direct effect on the Project and a Material Adverse Effect on the Project:

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

“Change in Shareholding of the Concessionaire” Shall have the meaning as set forth in Article 6.3.8.

“Company” means the company acting as the Concessionaire under this Agreement.

“Commercial Operations Date (COD)” shall mean the date on which Authority’s Representative allows the commercial operation of the Project Facilities based on the Readiness Certificate issued by the Project Management Consultant on completion of the Project Facilities and their readiness for occupancy subject to Applicable Laws. The Commercial Operation Date shall notwithstanding

anything contained herein commence only after the Concessionaire has handed over to the Authority, the Authority's Allocation in the manner provided in the Agreement.

"Concession Period" shall mean a period of 99 (ninety nine) years commencing from the Appointed Date.

"First Concession Year¹" shall mean a period starting from _____ (date of execution of Concession Agreement) to ___ of succeeding year and Concession Year shall be a period of one year calculated from the date immediately following the last day of the previous concession year.

"Concessionaire Event of Default" shall have the meaning set forth at Article 15.1.

"Construction Commencement Certificate" shall mean the certificate issued by the Authority's Representative to the Concessionaire after approving the DPR submitted by the Concessionaire and after the compliance of the Conditions Precedent as described under Article 5.

"Construction Commencement Date" shall mean the date of issue of Construction Commencement Certificate.

"Conditions Precedent" in shall have meaning as ascribed under Article 5.

"Contractor" shall mean any Person with whom the Concessionaire has entered into / may enter into any material contract in relation with the construction, operation and maintenance for the Project.

"Construction Period" shall mean a maximum period of 24 months from the Construction Commencement Date, in which the Concessionaire shall develop the Project Facilities.

"Construction Works" shall mean all the works at the Project Site, required to be undertaken by the Concessionaire, in conformity with the specifications and the Applicable Law which need to be complied by the Concessionaire.

"Cure Period" shall mean the period provided under Article 15 of the Agreement for rectification of a default to the defaulting Party.

"Damages" shall have the meaning set forth in Sub-Article (w) of Article 1.2.1.

"Debt Due" means the aggregate of the following sums expressed in Indian Rupees outstanding and payable to the Lenders in respect of the Project under the Financing Documents :-

- (i) The principal amount of the debt provided by the Lenders under the Financing Documents for financing the Project which is outstanding as on the Transfer Date excluding any part of the principal (of such debt) that had fallen due for repayment one year prior to the Transfer Date unless such repayment had been rescheduled with the prior consent of the Authority; and
- (ii) All accrued interest, financing fee and charges payable on or in respect of the debt referred to in the sub clause (i) above up to the date preceding the Transfer Date but excluding (a) any interest or charges that had fallen due one year prior to the Transfer Date, and (b) penal interest or charges payable under the Financing Documents to the Lenders;

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

"Department" shall mean the Department of Micro, Small & Medium Enterprises & Textiles, Government of West Bengal.

¹To be finalized as per the execution of Concession Agreement

“Detailed Project Report (DPR)” shall mean the detailed plan submitted by the Concessionaire for the Project containing the master plan, concept plan, project plan, structural plan, engineering plans, project construction plan, operation and maintenance plan including the time lines for the development and the operation and maintenance plan. This plan shall be inclusive but shall not be limited to the site appreciation, market study, area statement, land use pattern development mix, phase wise construction milestones, infrastructure development, economic and financial analysis, environmental and social assessments (as applicable to the Project Site). *The Concessionaire shall have to prepare DPR as per the detailed scope of work provided to the Concessionaire at the RFP stage by the Authority. This detailed scope of work shall be the basis for the development of Apparel Wholesale Hub.*

“Development Rights” shall have the meaning set forth in Article 3.1.

“Dispute” shall have the meaning set forth in Article 17.1.1.

“Dispute Resolution” shall mean the procedure for resolution of Disputes set forth in Article 17.

“Document” or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programs, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form.

“Encumbrance” shall mean any encumbrance such as 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 arrangements under any insurance policy pertaining to the Project, physical encumbrances, claims for any amounts due on account of taxes, cesses, electricity, water and other utility charges and encroachments on the Project Facility.

“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, and includes the Sub-Accounts of such Escrow Account.

“Escrow Agreement” shall have the meaning set forth in Article 10.1.2.

“Escrow Bank” shall have the meaning set forth in Article 10.1.1.

“Escrow Default” shall have the meaning set forth in Schedule IV.

“Equity” means the sum expressed in Indian Rupees representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component. In case the Concessionaire is a LLP, equity capital shall mean the capital brought in by the partners of the LLP as part of the Total Project Cost.

“Financial Closure” means the legally binding loan documentation entered into between the Concessionaire and Lenders to mobilize the financial requirements for the Project, as set out in the approved DPR.

“Financial Package” shall mean the financing package indicating the total capital cost of the Project and the means of financing thereof, as set forth in the financial model and approved by the Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt and Equity Support, if any.

“Financial Year” or **“Accounting Year”** shall mean the period commencing from April 1 of any given year to March 31 of the succeeding year.

“Financing Agreements” means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost.

“Financing Documents” shall mean collectively the documents evidencing Lenders’ commitment to finance the Project.

“Force Majeure” or **“Force Majeure Event”** shall mean an act, event, condition or occurrence as specified in Article 14 of this Agreement.

“GoI” shall mean the Government of India.

“GoWB” shall mean the Government of West Bengal.

“Good Industry Practice” shall mean the exercise of that degree of skill, diligence, prudence, integrity and foresight in compliance with the undertakings and obligations under this Agreement, which would reasonably and ordinarily be expected of a skilled and an experienced person engaged in the implementation, operation and maintenance or supervision or monitoring thereof or any of them of a project similar to that of the Project.

“Government Agency” shall mean Government of India (GoI), GoWB, Corporation or any state government or governmental department, commission, board, body, bureau, agency, authority, instrumentality, court or other judicial or administrative body, Central, State, or local, having jurisdiction over the Parties, the Project Facility or any portion thereof, or the performance of all or any of the services or obligations of the Concessionaire under or pursuant to this Agreement.

“Gross Revenues” shall include any and all revenues accruing to the Concessionaire from the Project Facilities including those from sub-lease premium, annual rent, monthly rent, interest accrued from security deposit for all plots / built up spaces, maintenance charges, service charges from the built up spaces, and any other tariff that the Concessionaire may charge from a sub-lessee / tenant.

“Indemnified Party” shall mean the Party entitled to the benefit of an indemnity pursuant to Article 13.

“Indemnifying Party” shall mean the Party obligated to indemnify the other Party pursuant to Article 13.

“Indirect Political Event” shall have the meaning set forth in Article 14.3.

“Insurance Cover” shall mean the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 6.3.6, and includes all insurances required to be taken out by the Concessionaire under Article 6.3.6(a) but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event.

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

“**Lead Member**” shall mean _____.

“**Lease Deed**” shall mean the Deed by which the Project Site is /will be granted on lease by the Authority to the Concessionaire upon the approval of the DPR by the Authority for devolving the right to sub lease the Project Facilities till the end of Concession Period. (The draft Lease Deed, which shall be executed with the Concessionaire, is annexed under Schedule X).

“**Lenders**” means the Scheduled Banks which finance or refinance the debt component of the cost of the Project.

“**Lenders’ Representative**” means the person duly authorised by the Lenders to act for and on behalf of the Lenders with regard to matters arising out of or in relation to this Agreement, and includes its successors, assigns and substitutes.

“**Liquidated Damages**” shall have the meaning provided to it in Article 2.

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

“**Material Breach**” shall mean a breach by either Party of any of its obligations under this Agreement which has or is likely to have a Material Adverse Effect on the Project and which such Party shall have failed to cure.

“**Non-Political Event**” shall have the meaning set forth in Article 14.2.

“**Occupational Charge**” shall have the meaning set forth in Schedule VIII.

“**O&M**” means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities in accordance with the provisions of this Agreement.

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

“**O&M Contractor**” means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire. Such person shall not be an Associate or Affiliate of the Concessionaire or the consortium members. There shall be no relation whatsoever between the O&M Contractor and the Concessionaire and both parties shall operate on an arm’s length principle.

“**O&M Expenses**” means expenses incurred by or on behalf of the Concessionaire or by Authority, as the case may be, for all O&M including,

- a) cost of salaries and other compensation to employees,
- b) cost of materials, supplies, utilities and other services,
- c) premia for insurance,
- d) all taxes, duties, cess and fees due and payable for O&M,
- e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs,
- f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and
- g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement.

“O&M Performance Security” shall mean the deposit provided by the Concessionaire as a guarantee for the performance of its obligations and is in accordance with Article 6.1.2

“Operations Period” shall normally mean a period after Construction Period. In any case, total of Operations Period and Construction Period shall not exceed concession period of 99 years.

“Parties” shall mean the parties to this Agreement and

“Party” shall mean either of them, as the context may admit or require.

“Performance Security” shall mean the deposit provided by the Concessionaire as a guarantee for the performance of its obligations and is in accordance with Article 6.1.1.

“Person” shall mean (unless otherwise specified or required by the context), any individual, company, corporation, partnership, trust, unincorporated organization, government or government body or any other legal entity.

“Political Event” shall have the meaning set forth in Article 14.4.

“Principal sub-lease or license agreement” shall have the meaning as ascribed in Article 4.4.4

“Project” shall mean designing, engineering, procuring, financing, construction, operation and maintenance of the Apparel Wholesale Hub at Sector V, Salt Lake, West Bengal and related Project Facilities in accordance with the provisions of this Agreement.

“Project Agreement” means collectively this Agreement, construction contracts, operations and maintenance contracts, Escrow Agreement, Lease Deed and any other material contract (other than Financing Documents) entered into or may enter into by the Concessionaire in connection with the Project.

“Project Components” shall mean the core facilities, common facilities, common facility building, common Infrastructure and other amenities as fully detailed in the RFP and DPR.

“Project Facility/ Facilities” shall mean the facilities comprising of the facilities along with the Project Site, which shall be developed in accordance with the approved DPR, the specifications mentioned under this Agreement and as per the Applicable Laws.

“Project Handover Requirements” shall have the meaning set forth in Article 16.2.2(c).

“Project Management Consultant” shall have the meaning set forth in Article 8.1.

“Project Site” shall mean land admeasuring about 3.78 acres at Sector V, Salt Lake as described in Schedule I and includes the entire land to be developed for the project, including the land for the components, if any, to be developed by the Authority/Department.

“Proposals/ Request for Proposal (RFP)” shall mean the Request for Proposal Document, issued by the Authority dated _____, to the interested bidders in the proposal stage and the amendments and modifications made from time to time together with all annexure, schedules along with such corrigendum, addendum, amendments which may be made from time to time.

“Provisional Readiness Certificate” shall have the meaning set forth in Article 6.3.3.

“Readiness Certificate” shall have the meaning set forth in Article 6.3.3.

“Rupees” or **“Rs.”** refers to the lawful currency of the Republic of India.

“Scheduled Completion Date (SCD)” shall mean date of completion of the development of the Project Facilities within a maximum period of 24 months from the Construction Commencement Date.

“Specifications and Standards” shall mean the methods, practices and standards as may be specified by the Project Management Consultant and shall include the practices and methods generally followed for projects of such nature with respect to construction, design and management of the Project Facility.

“Standards of Reasonable and Prudent Developer” means the standards, practices, methods and procedures expected from a person seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertaking exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in the same type of undertaking under the same or similar circumstances and conditions.

“Statutory Auditors” means a firm of chartered accountants appointed in terms of the Companies Act, 2013 and acting as the statutory auditors of the Concessionaire.

“Subordinated Debt” shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a. the principal amount of debt provided by Lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and
- b. all accrued interest on the debt referred to in sub-article (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 Transfer 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’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“Tax” 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, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income.

“Termination” shall mean early termination of this Agreement pursuant to Termination Notice or otherwise in accordance with the provisions of this Agreement whichever is earlier, but shall not, unless the context otherwise requires, include expiry of this Agreement due to efflux of time in the normal course.

“Termination Date” shall mean the date specified in the Termination Notice as the date on which Termination occurs.

“Termination Notice” shall mean the notice of Termination by either Party to the other Party, in accordance with the applicable provisions of this Agreement.

“Total Project Cost” shall mean the sum of Rs. 1,50,00,00,000/- Crores (Rupees One Hundred and Fifty Crores only) being the cost of the Project as estimated by the Authority and disclosed in the Request for Proposal.

“Transfer Date” shall mean the date on which this Agreement and the concession granted hereunder expires whether pursuant to expiry of the Concession Period or pursuant to termination in accordance with the provisions of this Agreement.

1.2 Interpretation

- 1.2.1 In this Agreement, unless the context otherwise requires,
- a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
 - b) references as for the time being in force to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted;
 - c) references to a "person" and words denoting a natural person shall be deemed to include as a reference to any individual, firm, company, corporation, society, trust, government, State or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
 - d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
 - e) the words "include" and "including" are to be construed without limitation and shall be deemed to be followed by "without limitation" or "but not limited to" whether or not they are followed by such phrases;
 - f) references to "construction" or "building" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "construct" or "build" shall be construed accordingly;
 - g) references to "development" include, unless the context otherwise requires, development and construction of Project Facilities during the Construction Period, renovation, refurbishing, augmentation, upgradation and other activities during Operations Period incidental thereto, and "develop" shall be construed accordingly;
 - h) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
 - i) any reference to day shall mean a reference to a calendar day;
 - j) references to a "business day" shall be construed as a reference to a day (other than a Sunday) on which banks in Kolkata are generally open for business;
 - k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
 - l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
 - m) any reference to any period commencing "from" a specified day or date and "till" or "until" a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;

- n) the words importing singular shall include plural and vice versa;
- o) references to any gender shall include the other and the neutral gender;
- p) "lakh" means a hundred thousand (100,000) and "crore" means ten million (10,000,000);
- q) "indebtedness" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- r) references to the "winding-up", "dissolution", "insolvency", or "reorganization" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;
- s) save as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-Article shall not operate so as to increase liabilities or obligations of the Authority or Department hereunder or pursuant hereto in any manner whatsoever;
- t) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Project Management Consultant shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Project Management Consultant, as the case may be, in this behalf and not otherwise;
- u) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- v) references to Recitals, Articles, Sub-Articles or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, , Sub-Articles and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- w) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "Damages");
- x) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence;
- y) All the obligations of the Concessionaire under this Agreement are the joint and several liability of the Selected Bidder(s). Therefore any default by the Concessionaire shall be deemed to be the default by the Selected Bidder(s); and
- z) Any act or omission of the sub-contractors, agents, employees, officers and assigns of the Concessionaire shall be deemed to be an act or omission of the Concessionaire and

a default or breach of the Concessionaire wherever appearing shall be deemed to include breach or default by any of the said persons.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Project Management Consultant shall be provided free of cost and in three copies, and if Authority and/or the Project Management Consultant is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.

1.3 Measurements and arithmetic conventions

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

1.4 Priority of agreements, articles and schedules

- 1.4.1 This Agreement and all other agreements and documents forming part of or referred to in this Agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- a) this Agreement; and
 - b) all other agreements and documents forming part hereof or referred to herein;
i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to the provisions of Article 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- a) between two or more Articles of this Agreement, the provisions of a specific Article relevant to the issue under consideration shall prevail over those in other Articles;
 - b) between the Articles of this Agreement and the Schedules, the Articles shall prevail;
 - c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - d) between the written description on the drawings and the Specifications and Standards, the latter shall prevail;
 - e) between the dimension scaled from the drawings and its specific written dimension, the latter shall prevail; and
 - f) between any value written in numerals and that in words, the latter shall prevail.

2. Scope of work

The Scope of Work shall mean and include the following facilities to be developed in the Apparel Wholesale Hub in Sector V, Salt Lake. The same is not an exhaustive list and is to be described in detail in the Detailed Project Report to be prepared by the Concessionaire and approved by the Authority.

Total land area of the Project Site is around 3.78 acres.

Proposed project components to be developed in the Apparel Wholesale Hub at Sector V, Salt Lake include:

1. Core Facilities
 - a) Block(s) comprising units for wholesalers/ traders
2. Common Facility Building comprising:
 - a) Display Center
 - b) Conference Hall
 - c) Bank with ATM
 - d) Administrative Office
 - e) Canteen with kitchen
 - f) Electrical Rooms on each floor
3. Common Facilities
 - a) IR Plant
 - b) Parking space for vehicles
4. Common Infrastructure
 - a) Internal roads along with paved area
 - b) Electrical Sub-station along with transformers
 - c) Bore Well and Pump
 - d) Storm Water Drainage System
5. Other Amenities
 - a) Land development with landscaping
 - b) Boundary wall for the entire Project Site
 - c) Gates and Guard Rooms
 - d) Firefighting arrangement for entire park and buildings
 - e) Underground Water Reservoirs
 - f) Common Toilet Block

The Concessionaire shall have to undertake land development of entire 3.78 acres. The Project Components shall be developed as per the Detailed Project Report submitted by the Concessionaire. The Concessionaire shall be permitted to deviate from the proposed Project Components mentioned above only with the prior written approval of the Authority.

Timelines for the development of Project Facility

The Construction Works should be completed within 2 (two) years from the Construction Commencement Date. The Concessionaire will also have to provide the proposed timelines for development of the Project Components i.e. Project Milestones, within the overall period of 2 (two) years which shall then be finalised in consultation with the Authority by the Concessionaire. In the event of failure to achieve the Scheduled Commercial Operations Date or the mutually agreed Project Milestones, the Authority will levy damages of Rs. 2,00,000 (Rupees Two Lakhs) per month or part thereof ("**Liquidated Damages**"), starting from the date following the Scheduled Commercial

Operations Date or the date immediately following the date by which the Project Component(s) was/were supposed to have been completed, till the actual completion of the Project Facilities/Project Components, as the case may be.

Liquidated Damages shall not be imposed, if the delay occurs due to any Force Majeure Event, or for any delay in development of components which are to be developed by the Authority.

Notwithstanding anything contained in this document, the Authority shall have the right to take back the land constituting the Project Site in the event of failure of the Concessionaire to complete construction of the Project Facilities/ Project Components within the timelines finalized between the Parties.

Liquidated Damages Claim Letter shall be issued by the Authority after every 3 (three) months from the day on which the delay occurs or such earlier time frame as the Authority may decide, till the period the Project Component is developed/ Project Facility is made operational by the Concessionaire. The Concessionaire after completing the required work shall inform the Authority that the Project Component has been developed/ made operational. The Authority or its Authorized Representative shall either after inspection of the work by itself and satisfying itself that the work has been completed or on the basis of the report of the Project Management Consultant that the work has been completed, issue a Liquidated Damages Completion Letter, which shall also mention the unpaid balance Liquidated Damages to be paid for the period in which the work is completed. In case of a delay in completion of the Project Facility, the date of issue of the Readiness Certificate shall be the date for issue of the Liquidated Damages Completion Letter. The Liquidated Damages Completion Letter shall also mention the unpaid balance Liquidated Damages to be paid for the period in which the Project Facility is completed.

The Concessionaire shall have to pay the Liquidated Damages within a period of 60 (sixty) days from issuance of Liquidated Damages Claim Letter or the Liquidated Damages Completion Letter. In case, the Liquidated Damages is not paid within 60 (sixty) days from issuance of Liquidated Damages Claim Letter or the Liquidated Damages Completion Letter, the Department shall have the right to terminate the contract as per the provisions stated in this Concession Agreement.

3. Grant and Acceptance of Development Rights

3.1 Grant of Development Rights

Subject to and in accordance with the terms and conditions set forth in this Agreement, the Authority hereby grants and authorizes the Concessionaire to investigate, study, design, engineer, procure, finance, construct, operate and maintain the Project Facility and exercise and enjoy the rights, powers, benefits, privileges, authorizations and entitlements as set forth in this Agreement (“**Development Rights**”).

3.2 Period of Development Rights

The grant of Development Rights shall be deemed to commence from the Appointed Date and continue till the expiry of the Concession Period.

Provided that in the event of termination of this Agreement, the Development Rights would be limited to the period commencing from the Appointed Date and ending with the Termination Date.

3.3 Acceptance of Development Rights

In consideration of the rights, privileges and benefits conferred upon the Concessionaire, and other good and valuable consideration expressed herein, the Concessionaire hereby accepts the Development Rights and agrees and undertakes to perform / discharge all of its obligations in accordance with the provisions hereof.

4. Project Site

4.1 Handover of Project Site

- a) Subject to the DPR having been submitted by the Concessionaire as per the timelines provided herein and the same having been approved by the Authority and subject to receipt of the Occupational Charge by the Authority, the Authority shall, within 180 (One hundred eighty) days of the Appointed Date, handover to the Concessionaire on an as-is-where-is basis, vacant and peaceful physical possession of the Project Site free from encumbrance, for the purpose of implementing the Project.
- b) Upon the Project Site being handed over pursuant to the preceding Sub-Article (a), the Concessionaire shall, subject to the provisions of Article 6 have the right to enter upon, occupy and use the same and to make at its costs, charges and expenses such investigation, development and improvements in the Project Site as may be necessary or appropriate to implement the Project in accordance with the provisions of this Agreement. Until the Lease Deed is executed with the Concessionaire, the Concessionaire shall be able to enter the Project Site for the purposes exclusively relating to the Project upon payment of Occupational Charges in accordance with the Agreement.

4.2 Rights, title and use of the Project Site

- a) The Concessionaire shall have the right to use the Project Site for the purpose of implementing the Project in accordance with the provisions of this Agreement and for this purpose, it may regulate the entry into and use of the same by third parties.
- b) The ownership of the Project Site shall be and continue to be that of the Authority.
- c) The Concessionaire shall abide by all applicable laws relating to development of the Project Site and relevant environmental norms and develop the Project Site as mentioned in the Scope of Work.
- d) The Concessionaire shall have the right to collect revenues or maintenance charges for undertaking various activities in the Project Site after execution of the Lease Deed by the Authority. The Concessionaire shall have the right to sub-lease or sub-license the Project Facility to the end users / occupants only after such execution. However, such right of the Concessionaire to sub-lease or sub-license the Project Facility shall not at any time extend to the Authority's Allocation.
- e) The Concessionaire shall have the right to charge, collect and retain from the end users, service charges for providing various services or facilities at the Project Site. The user charges shall be fixed in consultation with the Authority.
- f) The Concessionaire shall not create any Encumbrance on the whole or any part of the Project Facilities save and except as set forth and permitted under this Agreement.
- g) The Concessionaire shall not, without the prior written approval of Authority, use the Project Site for any purpose other than for the purpose of the Project and purposes incidental or ancillary thereto.

- h) The Concessionaire shall allow access to and use of the Project Site for laying / installing / maintaining telephone lines, electric lines or for such other public purposes as Authority's Representative may specify:

Provided that such access or use shall not result in a Material Adverse Effect and that Authority's Representative shall, in the event of any physical damage to the Project Facilities on account thereof, ensure that the Project Facilities are promptly restored at its cost and expenses:

Provided further, that to the extent such access and use allowed by the Concessionaire affects the performance of any of its obligations hereunder, the Concessionaire shall not be deemed or construed to be in breach of its obligations nor shall it incur / suffer any liability on account thereof.

4.3 Peaceful Possession

- 4.3.1 The Authority hereby warrants that:

- a) it has the title to the Project Site.
- b) Authority has the power to grant lease of the Project Site in the manner contemplated in this Agreement.
- c) The Concessionaire shall, subject to complying with the terms and conditions of this Agreement, remain in peaceful possession of the Project Site.

4.4 Transfer of rights to sub lease project facilities

- 4.4.1 The ownership of the Project Site shall remain with the Authority and shall not be transferred to the Concessionaire. The Authority shall execute the Lease Deed and thereby grant the right to sub lease in respect of the Project Site and the Project Facilities to the Concessionaire in accordance with the Agreement subject to the DPR having been submitted by the Concessionaire as per the timelines provided herein and the same having been approved by the Authority and subject to receipt of the Occupational Charge by the Authority. The Concessionaire shall have the right to mortgage or charge its leasehold interest in the demised land (not the demised land itself), save and except the Authority's Allocation and the leasehold interest in the Authority's Allocation Land with the prior permission of the Authority in favour of Scheduled Banks however without foisting any liability on the Authority.
- 4.4.2 The Concessionaire shall submit a request to the Authority's Representative to execute the Lease Deed. Such request shall be submitted within 10 (ten) days of the approval of the DPR by the Authority and payment of Occupation Charge. It is clarified that Lease Deed shall expire on the expiry of the Concession Period or earlier termination of this Agreement.
- 4.4.3 Subject to Article 9.1.1 and other provisions of the Agreement, the Concessionaire shall have the right to sub-lease or license only after the Lease Deed is executed as mentioned herein above in accordance with the terms and conditions of this Agreement. However, such right of sub-lease or sub-license shall not extend to the Authority's Allocation and the Authority's Allocation Land. It is expressly clarified that all such sub-leases or licenses shall expire on the expiry of the Concession Period or early termination of this Agreement. However, the Concessionaire shall be entitled to issue letters of allotment to intending sub-leases or licensees upon the execution of the Concession Agreement, prior to the execution of the Lease Deed with the prior approval of the Authority. Such letters of allotment shall also automatically terminate upon the termination of the Concession Agreement prior to the

execution of the Lease Deed and such letters of allotment shall not in any manner bind the Authority. The letter of allotment shall clearly state that issuance of the same does not grant any right or expectation that such intended sub-lessee/sub-licensee shall be entitled to a sub-lease or sub-license which shall *inter alia* be subject to the Lease Deed being executed between the Concessionaire and the Authority.

- 4.4.4 The Concessionaire shall prior to entering into any sub-lease or license, draft a "Principal Sub-Lease Deed or License Agreement" or like, containing the general terms and conditions of the sub-lease or license, that shall be submitted to the Authority for its approval. The Authority shall within 30 (thirty) days of receipt of such Principal Sub-Lease or License Agreement provide its comments on the general terms and conditions of the sub-lease / license to the Concessionaire. The Concessionaire shall incorporate the comments of Authority and submit the revised Principal Sub-Lease or License Agreement to the Authority within 7 (seven) days of receipt of the comments from the Authority. The Authority shall within 15 (fifteen) days of the receipt of the revised document grant its approval to Concessionaire for such revised Principal Sub-Lease or License Agreement. The Concessionaire hereby warrants that it shall only use the Principal Sub-Lease or License Agreement for entering into any sub-lease or license with any third party for the Project Facility. The Concessionaire shall draft the Principal Sub-Lease or License Agreement on the lines of the Lease Deed and it shall not be in conflict or in contravention of any provision of Lease Deed and Concession Agreement. Further the Concessionaire shall submit to the Authority, a copy of each sub-lease or license entered upon with the third party within a period of 15 (fifteen) days from such execution.
- 4.4.5 If the Concessionaire prior to sub-lease or license of the plots / land, intends to enter into any agreement, the draft of the same should also be on the same line of the "Principal Sub-Lease Deed or License Agreement" and the draft should also be submitted to the Authority for approval along with draft of "Principal Sub-Lease Deed or License Agreement".

4.5 Applicable Permits

The Concessionaire shall obtain and maintain the Applicable Permits and adhere to Applicable Law in such sequence as is consistent with the requirements of the Project. The Concessionaire shall be responsible and shall be in compliance with the terms and conditions subject to which Applicable Permits have been issued. In the event of non-compliance, the Concessionaire shall be liable for actions taken by any Government authority.

5. Conditions Precedent

5.1 Responsibilities of Concessionaire

5.1.1 The Concessionaire shall fulfil the following conditions precedent within 180 (one hundred eighty) days from the Appointed Date:

- a) The Concessionaire has to execute and procure execution of the Escrow Agreement.
- b) The Concessionaire has to procure the Applicable Permits required for commencement of the Construction Works in accordance with the DPR unconditionally or if subject to conditions, then such conditions required to be fulfilled by the date specified therein have been satisfied in full and such Applicable Permits are in full force and effect.
- c) The Concessionaire has to achieve the Financial Closure for the Project and establish the necessary financial evidence.
- d) The Concessionaire has to apply and obtain necessary permissions for commencing the Construction Works inclusive of the building permission for the Project Facility and also get the approval from Authority's Representative.

5.1.2 The Concessionaire shall submit the DPR to the Project Management Consultant and the Authority's Representative within 120 (one hundred and twenty) days from the Appointed Date.

5.2 Responsibilities of the Authority

5.2.1 The Authority shall fulfil the following condition precedent within 180 (one hundred eighty) days from the Appointed Date:

- a) The Authority shall handover the Project Site to the Concessionaire within 180 (One hundred eighty) days from the Appointed Date on an "as-is-where-is basis" for the purpose of the Project free of any charges subject to the Concessionaire having paid the Occupational Charges and the DPR submitted by the Concessionaire in accordance with the timelines contained herein and has been approved by the Authority.

5.3 Cost of satisfying the Conditions Precedent

The cost of satisfying the above Conditions Precedent shall be borne by the respective Parties responsible for satisfaction of the Conditions Precedent.

5.4 Non-fulfilment of the Conditions Precedent

5.4.1 In case of non-fulfilment of the Conditions Precedent attributable to Force Majeure events, the period for satisfaction of Conditions Precedent may be extended in writing by the discretion of the Authority for such period as Authority may deem fit.

5.4.2 Further, any of the Conditions Precedent set forth in Clause 5.1 may be waived fully or partially by the Authority at any time in its sole discretion or the Authority may grant additional time for compliance with these conditions and the Concessionaire shall be bound to ensure compliance within such additional time as may be specified by the Authority.

5.4.3 If any of the Conditions Precedent contemplated in Clauses 5.1 and 5.2 has not been satisfied in full or has not been waived, within the time stipulated or within such extended time that the Parties may agree upon, then and in such event the non-defaulting party shall have

the right to terminate this Agreement by giving 30 (thirty) days' notice in writing to the defaulting party, given at any time thereafter, but prior to such Conditions Precedent being satisfied or waived, and if the Conditions Precedent are not satisfied or waived within such notice period, upon expiry of such notice, this Agreement shall terminate. Any extension of time granted by the Authority for the fulfilment of conditions precedent to the Concessionaire shall be without prejudice to the right of the Authority to levy Liquidated Damages as specified in Article 2 for the period for which the delay in fulfilment of the conditions precedent continues. All payment of Liquidated Damages shall be made by the Concessionaire within 60 (sixty) days from the date of demand made by the Authority.

- 5.4.4 If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth at Article 5.1, the Concessionaire shall not be compensated in any manner whatsoever and the Performance Security shall be forfeited and encashed by the Authority.
- 5.4.5 If the Agreement is terminated due to non-satisfaction of Conditions Precedent set forth at Article 5.2 not arising as a result of the default of the Concessionaire, then Authority's Representative shall release the Performance Security to the Concessionaire without any liability for payment of interest.

6. Concessionaire's / Selected Bidder's obligations

In addition to and not in derogation or substitution of any of its other obligations under this Agreement, the Concessionaire shall have the following obligations:

6.1 Financial obligations

6.1.1 Performance Security

- a) The Selected Bidder(s) has on behalf of the Concessionaire, for due and punctual performance of its obligations hereunder relating to the Project, already delivered to the Authority, an irrevocable bank guarantee issued on a Nationalised Bank from a branch in Kolkata, in favour of "Secretary, Department of Micro, Small & Medium Enterprises & Textiles" as per the format provided in Schedule II, ("Performance Security") for a sum of Rs. 20,00,00,000/- (Rupees Twenty Crores only). All charges, fees, costs and expenses for providing the Performance Security in the form of a bank guarantee shall be borne and paid by the Concessionaire. The Performance Security, shall be valid for an initial period of 1 (one) year and shall be renewed 30 (thirty) Days prior to expiry of each year, for an additional term of 1 (one) year and for such further period till the Project Management Consultant certifies that the construction of Project Facilities is complete in all respect. It shall be the sole responsibility of Concessionaire to renew the Performance Security each year and to provide confirmation of renewal to the Authority. Non-submission of renewed Bank Guarantee as per the stipulated timeline or for the period till the Readiness Certificate is issued, shall lead to encashment of Performance Security and termination of this Agreement due to Concessionaire's Event of Default. It is also clarified that the Concessionaire shall be liable to restore the Performance Guarantee to the full amount in case of part encashment of the same by Authority. This shall be done within 30 (thirty) Days of any such part encashment.
- b) The Concessionaire agrees that the Performance Security shall be kept valid till the Project Management Consultant certifies that the construction of Project Facilities is complete in all respect and issues the Readiness Certificate. The Performance Security shall be released to the Concessionaire on the issue of the Readiness Certificate by the Authority for the Project Facility:
- c) Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the Performance Security if subsisting as of the Termination Date shall, subject to Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

6.1.2 O&M Performance Security

- a) The Concessionaire shall, for due and punctual performance of its obligations hereunder relating to the Project, deliver to Authority, before issuance of Readiness Certificate, an irrevocable bank guarantee issued on a Nationalized Bank from a branch in Kolkata, in favour of "Secretary, Department of Micro Small & Medium Enterprises & Textiles" as per the format provided in Schedule III, ("O&M Performance Security") for a sum of Rs. XXX² (Rupees XXX). All charges, fees, costs and expenses for providing the O&M Performance Security in the form of a bank guarantee shall be borne and paid by the

²Equivalent to O&M cost of first 5 years post COD for the Project Site as per the approved DPR

Concessionaire. The O&M Performance Security, shall be valid for an initial period of 5 (five) years and shall be renewed 30 (thirty) Days prior to expiry of each year, for the subsequent term of 5 (five) years therefrom. The O&M Performance Security has to be maintained by the Concessionaire till the end of Concession Period. It shall be the sole responsibility of Concessionaire to renew the O&M Performance Security and to provide confirmation of renewal to Authority. Non-submission of renewed Bank Guarantee as per the stipulated timeline and in accordance with the provisions of Clause 6.1.2, shall lead to encashment of the O&M Performance Security and termination of this Agreement due to Concessionaire's Event of Default. It is also clarified that the Concessionaire shall be liable to restore the O&M Performance Security to the full amount in case of part encashment of the same by the Authority. This shall be done within 30 (thirty) Days of any such part encashment.

- b) The O&M Performance Security for the initial bank guarantee period shall be Rs. XXX (Rupees XXX). For all subsequent renewals, the amount of security will be based on the actual expenses incurred in the previous period adjusted for WPI inflation. For example, if the Commercial Operations Date is 24 months (2 years), then the first O&M Performance Security shall be for the period year 3 to year 7. The second bank guarantee is to be provided for the years 8 to 12 and the amount shall be based on the actual operations cost incurred in years 3 to 7 adjusted for inflation. The third bank guarantee is to be provided for the years 13 to 17 and the amount shall be based on the actual operations cost incurred in years 8 to 12 adjusted for inflation.
- c) The Concessionaire agrees that the O&M Performance Security shall be kept valid till the entire Concession Period. The O&M Performance Security shall be released to the Concessionaire on the expiry of this Agreement after adjusting any amounts due from the Concessionaire.
- d) Provided that if the Agreement is terminated due to any event other than a Concessionaire Event of Default, the O&M Performance Security shall, subject to Authority's right to receive amounts, if any, due from the Concessionaire under this Agreement, be duly discharged and released to the Concessionaire.

6.1.2.1 Financing arrangement

The Concessionaire shall at its cost; expenses and risk make such financing arrangements as would be necessary to implement the Project and to meet all of its obligations under this Agreement, in a timely manner. For such purpose, the Concessionaire may assign its rights and interest to or in favour of the Lenders as security for financing provided by Lenders under the Financing Document.

6.2 Ownership and Control of Concessionaire

- 6.2.1 The ownership and control of the Concessionaire shall always be with the Selected Bidder(s). The Selected Bidder and in case of consortium, the Lead Member and the other members of the consortium undertake that they shall not without the prior written consent of the Authority cause any change to the present pattern of ownership, management and control of the Concessionaire whether directly or indirectly during the subsistence of the Agreement.

6.3 Design, Construction and Operational obligations

6.3.1 Detailed Project Report (DPR)

- a) The Concessionaire shall, subject to Applicable Laws for the Project Site and as per the requirements under this Agreement prepare a DPR for the Project Facilities and submit the same to the Project Management Consultant for approval within a period of 120 (one hundred and twenty) days from the Appointed Date and in such sequence as is consistent with and essential for the approval process, at the Concessionaire's cost.
- b) The Project Management Consultant shall, within a period of 30 (thirty) days from the submission of the DPR, review and approve the DPR, or shall communicate the changes, revisions and modifications in the DPR. The Concessionaire shall make the changes, revisions and modifications within 10 (ten) days from such receipt of the comments and shall resubmit the DPR to the Project Management Consultant for its approval.
- c) The Project Management Consultant shall, within a period of 7 (seven) days from such resubmission, ascertain whether the Concessionaire has carried out the changes, revisions and modifications and accordingly accord its approval to the DPR and recommend to the Authority's Representative to issue a Construction Commencement Certificate to the Concessionaire. Such Construction Commencement Certificate shall be issued within 7 (seven) days of receipt of the approval of the DPR from the Project Management Consultant. The Concessionaire can commence the Construction Works only after the receipt of the Construction Commencement Certificate.
- d) If the Concessionaire fails to submit the DPR and modifications thereof in accordance with the timelines contained herein or any extended timeline as may be granted by the Authority at its sole discretion, the same shall constitute a Material Breach of obligations by the Concessionaire and the Authority shall be entitled to terminate the Agreement in accordance with the provisions herein. Further, any extension granted by the Authority for submission/modification of the DPR by the Concessionaire shall be without prejudice to the Authority's right to levy Liquidated Damages as specified in Article 2, commencing from the date on which the DPR/modification to the same was required to have been submitted and ending with the date on which the DPR/modification thereof is finally submitted. All payments towards Liquidated Damages shall be made within 60 (sixty) days from the date of demand made by the Authority to the Concessionaire.

6.3.2 Project implementation – Construction Works

- a) The Concessionaire shall acquire the Applicable Permits and necessary building permissions prior to the commencement of the construction.
- b) The Concessionaire shall construct the Project Facilities as per the approved DPR.
- c) The Concessionaire can commence Construction Works only as per the Applicable Law for the time being in force and the approved DPR.

- d) The Concessionaire shall complete construction of the entire Project Facilities within 24 months from the date of Construction Commencement Date (Scheduled Completion Date). However, construction of the individual Project Facilities/ Project Components is to be completed within the timelines as agreed between the Parties and in the manner specified in the approved DPR.
- e) The Concessionaire can make deviations from the approved DPR only after acquiring prior written approval from the Project Management Consultant and Authority.
- f) The Concessionaire may undertake Construction Works by itself or through a notified Contractor possessing requisite technical, financial and managerial expertise / capability; but in either case, the Concessionaire shall remain solely responsible to meet specifications mentioned under this Agreement.

6.3.3 Readiness Certificate

a) Tests

- I. At least 30 (thirty) days prior to the likely completion of the Project Facilities/any Project Component, the Concessionaire shall notify the Project Management Consultant of its intent to subject the Project Facilities/ Project Component to Tests. The date and time of each of the Tests shall be determined by the Project Management Consultant in consultation with the Concessionaire, and notified to Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Project Management Consultant may reasonably require for conducting the Tests. In the event of the Concessionaire and the Project Management Consultant failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Project Management Consultant.
- II. The Project Management Consultant shall observe, monitor and review the results of the Tests to determine compliance of the Project Facilities/ Project Component with the Applicable Law and the approved DPR and if it is reasonably anticipated or determined by the Project Management Consultant during the course of any Test that the performance of the Project Facilities or any part thereof does not meet the approved DPR or is in violation of the Applicable Laws, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Project Management Consultant shall provide to the Concessionaire and Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Project Management Consultant may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Project Facilities/ Project Components with the approved DPR and the Applicable Laws.

b) Provisional Readiness Certificate

Upon completion of Construction Works as per the approved DPR to the extent of a minimum area as agreed between the Parties and in accordance with the timelines agreed between the Parties, such that it is ready for occupancy, and the Project Management Consultant determining the Tests to be successful, the Project Management Consultant shall forthwith issue to the Concessionaire and Authority a certificate

substantially in the form set forth in Schedule IX (the “**Provisional Readiness Certificate**”).

c) Readiness Certificate

Upon completion of Construction Works and the Project Management Consultant determining the Tests to be successful, the Project Management Consultant shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule V (the “**Readiness Certificate**”).

It is clarified that the Readiness Certificate shall not be issued by the Authority and the Concessionaire shall not be entitled to the Readiness Certificate till such time the Authority’s Allocation has been constructed and completed in accordance with the Agreement, Applicable Laws and Applicable Permits and handed over to the Authority. On a question whether the Authority’s Allocation has been constructed and completed in accordance with the Agreement, Applicable Laws and Applicable Permits, the decision of the Project Management Consultant shall be final.

6.3.4 Extension of Scheduled Completion Date

- a) If the completion of the Project Facility or the Project Component is delayed beyond the Scheduled Completion Date (SCD) or the agreed timeline for completion of such Project Component, then Authority may at its discretion on being satisfied on grounds of justification increase the Scheduled Completion Date or the timeline for completion of such Project Component by such period as it may deem fit and proper subject to a maximum period of 180 (One Hundred and Eighty) days and without prejudice to its right to claim Liquidated Damages. Further, for any delay in obtaining government clearances/permits arising only due to the delay by the authority responsible for granting the clearance/permits, then the Scheduled Completion Date may be extended at the sole discretion of the Authority by such period as it may deem fit.
- b) If the delay (for delays on account of the Concessionaire) extends beyond the 180 (One Hundred and Eighty) days period from the SCD, or the timeline for completion of the Project Component, then Authority’s Representative shall, subject to the provisions of Article 14, be entitled to terminate this Agreement and appropriate the entire Performance Security.

6.3.5 Project implementation - Operation and Maintenance

- a) The Concessionaire shall also operate and maintain the Project Facilities in accordance with the Standards of Reasonable and Prudent Developer and in accordance with the approved DPR and Applicable Laws and for that purpose, do all such acts, deeds and things necessary and expedient including, without limitation obtaining all the approvals required for the operation and maintenance of the Project Facilities in accordance with Applicable Law.

For the avoidance of doubt, it is hereby clarified that the Concessionaire shall be responsible for the operation and maintenance of the Project Facilities and the Project Site for the Concession Period, and shall ensure that no damage or loss is caused to the Project Facilities;

- b) If the Concessionaire fails to maintain the Project Facilities in accordance with the Standards of Reasonable and Prudent Developer and in accordance with the approved DPR and Applicable Laws, then Authority shall issue a notice to the Concessionaire to

remedy the shortfall in performance. If however, the Concessionaire fails to rectify the remedy to the satisfaction of Authority after a period of 90 (ninety) days from the day of receipt of the said notice, then Authority's Representative shall, subject to the provisions of Article 14, be entitled to terminate this Agreement and appropriate the entire O&M Performance Security.

6.3.6 Insurance

a) Insurance during Concession Period

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operations Period, such insurances for such maximum sums as may be required under the financing agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Lenders' dues.

b) Notice to Authority

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

c) Evidence of Insurance Cover

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

d) Remedy for failure to insure

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

e) Waiver of subrogation

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

f) Concessionaire's waiver

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

g) Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Article 10.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

h) Un-insurable risk

If any risk, which has been previously insured, becomes un-insurable due to the fact that the insurers have ceased to insure such a risk and therefore insurance cannot be maintained / re-instated in respect of such risk, the Concessionaire shall not be deemed to be in breach of its obligations regarding insurance under this Agreement.

6.3.7 Environmental Compliance

The Concessionaire shall, at all times, ensure that all aspects of the Project Facilities and processes employed in the construction and maintenance thereof shall conform with the laws pertaining to environment, health and safety aspects, policies and guidelines related thereto. The Concessionaire shall obtain and maintain from time to time all necessary clearances from the appropriate Government authorities and for this purpose shall carry out the necessary environmental impact assessment studies and implement appropriate environment management plans in respect of the Project Facilities.

6.3.8 Obligations relating to Change in Shareholding of the Concessionaire

Without prejudice to the provisions of Article 6.2:

- a) The Concessionaire shall not undertake or permit any Change in Shareholding of the Concessionaire, except with the prior approval of the Authority.
- b) The Lead Member shall commencing from the Agreement Date and for a period of 7 years from the date of commercial operation of the entire Project hold equity share capital of not less than 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire. Further, each member whose experience was considered for the purpose of Technical Capacity evaluated under the RFP for this Project, shall for a period of 5 years from the date of commercial operation of the entire Project, hold equity share capital not less than 26% (twenty six per cent) of the subscribed and paid up equity of the Concessionaire.
- c) Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:
 - I. all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or
 - II. acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Shareholding requiring prior approval of the Authority from national security and public interest perspective, the decision of Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

For the purposes of this Article 6.3.8:

- I. the indirect transfer of control or legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire; and
- II. power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situated in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the Board of Directors of the Concessionaire.

6.3.9 Applicable Permits

The Concessionaire shall, in respect of the Project Facilities, procure the Applicable Permits and be in compliance thereof at all times.

6.3.10 Land Ceiling Clearance

The Concessionaire shall in respect of the Project Site, apply for necessary land ceiling clearance under the Urban Land (Ceiling and Regulation), Act, 1976 and/or the West Bengal Land Reforms Act, 1955, if required.

6.4 General obligations

6.4.1 The Concessionaire shall at its own cost and expense:

- a) investigate, study, design, procure, finance, construct, operate and maintain the Project Facilities in accordance with the provisions hereof.
- b) obtain all Applicable Permits as required by or under the Applicable Law and be in compliance thereof at all times.
- c) shall not do or permit any activity on the Project Site which may be nuisance, annoyance or disturbance to the owners, occupiers or residents of other premises adjacent or in and around the vicinity.
- d) shall not interfere or cause damage to the properties of Authority whether located outside or inside the Project Site, such as water supply lines, street-lights and such other properties. If the Concessionaire tends to interfere with any such utilities then it has to take prior written permission from the respective Government authorities. However, existing infrastructure which is being provided by the Authority for this Project can be used by the Concessionaire.
- e) shall at the expiry of the Agreement or on the termination of this Agreement, whichever is earlier, surrender vacant, unencumbered and peaceful possession of the Project Site with all the Project Facilities to the Authority in good operable condition in accordance with provision mentioned under Article 16.1.
- f) ensure to submit the agreement/s with the end users/ occupants with Authority within 15 (fifteen) days from such execution.
- g) shall not encroach upon any adjoining land, road, pathway or footpath of the Authority or GoWB in any manner whatsoever;
- h) shall not make any excavation upon any part of the Project Site and shall not remove any stone, sand, gravel, clay or earth there from during the Operations Period.
- i) the stamp duty payable in respect of this Agreement and Lease Deed shall be borne by the Concessionaire.
- j) ensure and procure that any contract relating to the Project, entered into by the Concessionaire for implementing the Project Facilities in accordance with this Agreement contains provisions that would entitle a nominee of Authority to step into such contract/s at the discretion of Authority's Representative, in place and stead of the Concessionaire, pursuant to the provisions of this Agreement.

- k) procure and maintain in full force and effect, as necessary, appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used in or incorporated into the Project Facilities.
- l) make efforts to maintain harmony and good industrial relations among the personnel employed in connection with the performance of its obligations under this Agreement and shall be solely responsible for compliance with all labour laws and solely liable for all possible claims and employment related liabilities of its staff employed in relation with the Project and hereby indemnifies the Authority and/ or the Department against any claims, damages, expenses or losses in this regard and that in no case and shall for no purpose shall the Authority, Authority's Representative or Department be treated as employer in this regard.
- m) make its own arrangements for construction materials and observe and fulfil the environmental and other requirements under the Applicable Law and Applicable Permits.
- n) be responsible for all the health, security, environment and safety aspects of the Project at all times.
- o) ensure that the Project Facilities remain free from all encroachments and take all steps necessary to remove encroachments, if any.
- p) upon receipt of a request thereof, afford access to the Project Facilities to the Authority's Representative for the purpose of ascertaining compliance with the terms and conditions of this Agreement.
- q) the Concessionaire shall pay all existing and future taxes, cesses, rates, assessments and outgoings of every description including any property tax for the time being payable either by the end users or by the occupant in respect of the Project Facilities and anything for the time being thereon or as may be fixed from time to time. Also the Concessionaire shall pay all taxes, duties and outgoings, including utility charges relating to the Project Facilities. As regards supply of water, the Concessionaire shall abide by the conditions laid down in that behalf by the Authority from time to time:

Provided that in the case of a tax, cess rate or assessment as is required to be paid by the Authority in respect of the Project Site, the Concessionaire shall pay to the Authority an amount equal to such tax, cess, rate or assessment as the case may be.
- r) All the cost, expense and other amount due to the Concessionaire's employees shall be the sole responsibility of the Concessionaire even after the expiry of the Agreement.
- s) The Concessionaire shall construct and complete the Authority's Allocation prior to completion of the remaining Project Facilities. In constructing the Authority's Allocation, the Concessionaire shall use the same goods, materials and standards that are used for construction of the remaining Project Facilities and shall ensure that they are of the same standard and quality as the rest of the Project Facilities. The Concessionaire shall not encumber, alienate, dispose of or deal with the Authority's Allocation or the Authority's Allocation Land in any manner whatsoever and the ownership of the same shall vest solely with the Authority.

6.5 No Breach of Obligations

6.5.1 The Concessionaire shall not be considered to be in breach of its obligations under this Agreement nor shall it incur or suffer any liability if and to the extent performance of any of its obligations under this Agreement is affected by or on account of any of the following:

- a) Force Majeure Event, subject to Article 14;
- b) Solely due to Authority's Event of Default;
- c) Compliance with the instructions of Authority's Representative or the directions of any Government authority other than instructions issued as a consequence of a breach by the Concessionaire of any of its obligations hereunder.

6.6 Joint and several liability of the Selected Bidder

The Selected Bidder and members of the Selected Bidder, if the Selected Bidder is a consortium, shall be jointly and severally liable along with the Concessionaire for all its obligations, representations and commitments as made in the Concession Agreement for performance of the Project.

7. Authority's obligations

7.1 Authority's obligations

7.1.1 Authority shall have the following obligations:

- a) The Authority's Representative shall, on a best effort basis, provide support to the Concessionaire in obtaining timely approvals, permissions, statutory clearances including land ceiling clearance and authorisations for performance of obligations for the Project. The Authority shall on a best effort basis endeavour to provide support to the Concessionaire in obtaining incentives and concessions as may be available for the Project under the prevailing policies of the State/ Central Government.
- b) Grant lease of the Project Site, subject to the Concessionaire having complied with its obligation in this regard including submission of the DPR and revisions thereof in accordance with the timelines specified herein and the DPR having been approved by the Authority and the Concessionaire having paid the Occupational Charges to the Authority within the stipulated timeline.

8. Project Management Consultant

8.1 Appointment of Project Management Consultant

Authority shall appoint a consulting engineering firm to act as a Project Management Consultant under this Agreement (the “**Project Management Consultant**”). Such appointment shall be undertaken through a competitive bidding process undertaken by Authority. Alternatively, Authority may appoint body of experts comprising of representatives of reputed educational institutions like Indian Institute of Technology, Kharagpur, Jadavpur University, Bengal Engineering and Science University or any other equivalent institutes, as Project Management Consultant. The appointment shall be made no later than 60 (sixty) days from the date of this Agreement or at least 30 (thirty) days prior to scheduled DPR submission date and the Project Management Consultant shall provide services for a period of 5 (five) years. Authority reserves the right to appoint a Project Management Consultant anytime during the Operations Period if it so desires.

8.2 Duties and functions

- 8.2.1 The Project Management Consultant shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule VII.
- 8.2.2 The Project Management Consultant shall submit regular periodic reports (at least once every month) to the Authority in respect of its duties and functions set forth in Schedule VII.
- 8.2.3 The Project Management Consultant shall have no authority to relieve the Concessionaire of any of its responsibilities under this Agreement. Any proposal, inspection, examination, testing, consent, approval or similar act of or by the Project Management Consultant (including absence of disapproval) shall not relieve the Concessionaire from its obligations and responsibilities hereunder.

8.3 Remuneration

The remuneration, cost and expenses of the Project Management Consultant shall be paid by the Authority and one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to Authority within 15 (fifteen) days of receiving a statement of expenditure from Authority.

8.4 Termination of appointment

- 8.4.1 The Authority may, in its discretion, terminate the appointment of the Project Management Consultant at any time, but only after appointment of another Project Management Consultant.
- 8.4.2 If the Concessionaire has reason to believe that the Project Management Consultant is not discharging its duties and functions in a fair, efficient and diligent manner, it may make a written representation to the Authority and seek termination of the appointment of the Project Management Consultant. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Project Management Consultant for an amicable resolution of the Dispute. If the dispute is not resolved services of the Project Management Consultant shall be terminated hereunder, the Authority and Concessionaire shall mutually appoint another Project Management Consultant.

8.5 Authorized signatories

Authority shall require the Project Management Consultant to designate and notify to Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign for and on behalf of the Project

Management Consultant, and any communication or document required to be signed by the Project Management Consultant shall be valid and effective only if signed by any of the designated persons; provided that the Project Management Consultant may, by notice in writing, substitute any of the designated persons by any of its employees.

8.6 Dispute resolution

If either Party disputes any decision, direction or award of the Project Management Consultant, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

9. Consideration by the Concessionaire / Selected Bidder

9.1 Consideration

9.1.1 Subject to the provisions of this Agreement and in consideration of the grant of Development Rights to the Concessionaire:

- a) **Occupational Charge:** The Concessionaire agrees to pay the Authority, from execution of the Concession Agreement till execution of the Lease Deed, the Concessionaire shall make payment of an Occupational Charge in respect of the Land (as prescribed in Schedule VIII).
- b) **Authority's Allocation:** The Authority shall be entitled to [●] % ([●] percentage) share of the total Built-Up Area that can be constructed on the Project Site based on the maximum permissible FAR under the Applicable Laws i.e. _____ square feet ("**Authority's Allocation**"). The level, location, area and identification of the Authority's Allocation shall be as determined by the Authority. On any difference or dispute in relation to the Built-Up Area, its measurement or meaning thereof, the decision of the Project Management Consultant shall be final. The Concessionaire shall be entitled to commercially operate the Project, sub-lease/sub-license, deal with or dispose of any of the remaining Project Facilities i.e. other than the Authority's Allocation only after the Authority's Allocation has been developed in accordance with the Standards of Reasonable and Prudent Developer, Specifications and Standards and in terms of the Agreement and has been handed over to the Authority. The Authority's Allocation shall be developed using the same Specification, Standards, same amount of skill, workmanship and the same quality of materials as are being used for development of the remaining Project Facilities.

In the event, the maximum permissible FAR increases at any time during the Concession Period, the Authority's Allocation shall be calculated on such revised FAR based on the ratio/percentage mentioned above. For the avoidance of doubt it is hereby clarified that the space sharing percentage shall remain unaltered despite the increase in the FAR. It is further stated that if the Concessionaire becomes entitled to additional FAR at any time during the Concession Period, the Authority shall be entitled to additional Built-Up Area calculated in the manner provided herein on such additional FAR.

The Concessionaire shall ensure that the Authority's Allocation and the Authority's Allocation Land shall remain unencumbered and the Concessionaire shall not sub-lease, sub-let, sub-license, create any mortgage or charge, deal with or dispose of the Authority's Allocation and the Authority's Allocation Land. The Authority shall be the absolute owner of the Authority's Allocation and shall be entitled to deal with and dispose of the Authority's Allocation and Authority's Allocation Land in such manner as it may deem fit without requirement of any consent or interference of the Concessionaire. The Concessionaire shall cease to have any rights and interest in the Authority's Allocation Land upon hand over of the Authority's Allocation to the Authority and the leasehold interest of the Concessionaire shall subsist only in respect of the remaining land comprising the Project Site. The Concessionaire shall execute appropriate documents as may be required by the Authority in this regard.

The Authority shall be also entitled to such number of car parking spaces as provided in the approved DPR or in any subsequent modification approved by the Authority. The Authority shall also be entitled to use of all the common facilities, common infrastructure

and other amenities which the other users of the Project Facilities are entitled to. The Authority shall ensure that all the common infrastructure, common facilities and other amenities that are made available to the end users of the Project Facilities are made available to the Authority in respect of the Authority's Allocation on the same terms and conditions as is applicable to the other end users. In the event the Concessionaire fails to construct the Authority's Allocation in accordance with the provisions of the Agreement or comply with its obligation in relation to the Authority's Allocation or Authority's Allocation Land as contained in this Agreement, the Authority shall be entitled to liquidated damages of Rs.10,000/- (Rupees ten thousand) per day till such time the default is remedied without prejudice to its other rights under the Agreement.

- 9.1.2 In consideration of the Authority providing designated plot of land on concession for the Project, the Concessionaire agrees to pay an Annual Lease Rent (as prescribed in Schedule VII) of Rs._____ (Rupees _____) which shall be paid each year till the expiry of the Concession Period.

9.2 Mechanism of payment

- 9.2.1 The payment of the Annual Lease Rent shall be through the Escrow Account as per the terms of the Escrow Agreement executed amongst the Concessionaire, Authority, the Escrow Bank and the Lenders. The Annual Lease Rent will be collected on behalf of the Authority through the Escrow Account and shall be thereafter forwarded to the Authority.

10. Escrow Account

10.1 Escrow Account

10.1.1 The Concessionaire shall, prior to the Financial Closure, open and establish an Escrow Account with a Bank (the “Escrow Bank”) in accordance with this Agreement read with the Escrow Agreement.

10.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the “Escrow Agreement”) to be entered into amongst the Concessionaire, Authority, the Escrow Bank and the Lenders through the Lenders’ Representative, which shall be substantially in the form set forth in Schedule IV.

10.2 Deposits into Escrow Account

10.2.1 Deposits by Concessionaire

The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a) all monies received in relation to the Project from any source, including the Lenders and lenders of Subordinated Debt;
- b) all funds received by the Concessionaire from its share-holders, in any manner or form;
- c) all premium, annual rent, monthly rent, deposit, advances, maintenance charges, service charges in whatever name collected from the end-users / sub-lessee/ tenant;
- d) all revenues levied and collected by the Concessionaire;
- e) any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project;
- f) all proceeds received pursuant to any insurance claims; and
- g) all grants, funds, subsidies / incentives received from GOI, GoWB or any other government authority in connection with the Project.

10.2.2 Deposits by Authority

Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

a) Termination Payments

Provided that, notwithstanding the provisions of Article 10.3.1, the Authority shall be entitled to appropriate from the aforesaid amounts, any concession fee or amounts due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

b) Payment of set-off (if any) under Article 11.4 of this Agreement.

10.2.3 Deposits by Lenders

The Lenders’ Representative in the Escrow Agreement shall undertake to agree and confirm that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; notwithstanding anything to the contrary contained in this Agreement.

10.2.4 Interests on deposits

The Escrow Bank shall undertake to agree in the Escrow Agreement that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate there from, the fees and expenses due to it from the Concessionaire in relation to the Escrow Account.

10.3 Withdrawals during Concession Period

10.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) all payments relating to construction of the Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
- c) Annual Lease Rent as described under Schedule VIII of this Concession Agreement;
- d) all payments and Liquidated Damages certified by Authority as due and payable to it by the Concessionaire;
- e) O&M Expenses;
- f) monthly proportionate provision of Debt Service due in an Accounting Year;
- g) monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
- h) any reserve requirements set forth in the Financing Agreements; and
- i) balance, if any, in accordance with the instructions of the Concessionaire.

10.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Article 10.3.1, except with the prior written approval of the Authority.

10.3.3 No cash withdrawal from the Escrow Account shall be permissible.

10.4 Withdrawals upon Termination

10.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

- a) all taxes due and payable by the Concessionaire for and in respect of the Project;
- b) Outstanding payment of Annual Lease Rent (for the Concession Year in which the Termination has occurred)
- c) all payments and Damages certified by Authority as due and payable to it by the Concessionaire;
- d) outstanding Debt Service including the balance of Debt Due;
- e) outstanding Subordinated Debt;

- f) incurred or accrued O&M Expenses;
- g) any other payments required to be made under this Agreement; and
- h) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-Article (h) of this Article until a Vesting Certificate has been issued by Authority under the provisions of Article 16.3.

- 10.4.2 The provisions of this Article and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Article 10.4.1 have been discharged.

11. Accounts and Audit

11.1 Audited accounts

- 11.1.1 The Concessionaire shall maintain books of accounts (i.e cash book, ledger, etc.) recording all its receipts (including all Gross Revenues and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement.
- 11.1.2 Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 11.1.3 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of a Financial Year, furnish to Authority its unaudited financial statements(i.e.receipt& payment a/c, cash flow statement, income statement, balance sheet) in respect of the preceding quarter.
- 11.1.4 On or before the thirtieth day of June each Year, the Concessionaire shall provide to the Authority, for the preceding Financial Year, a statement duly audited by its Statutory Auditors giving summarized information on Gross Revenue and other revenues derived from the Project, and such other information as Authority may reasonably require.
- 11.1.5 The Concessionaire shall establish and maintain a monthly reporting system to provide storage and ready retrieval of data related to the construction and operation of the Project, including all such information which is necessary to verify the amount of revenue and to confirm that the Concessionaire is in compliance with its obligations under this Agreement. The Concessionaire shall provide copies of such reports to Authority within 5 (five) days of the end of each month.
- 11.1.6 The Authority shall also be entitled to carry out an audit on revenue, sales, rehabilitation / replacement work of Project Facilities, all receivables/income of the Concessionaire, any component in which the Authority / Government fund is going in or is supposed to come from, in whatsoever manner, by its own auditors at its costs, of the books of account of the Concessionaire. The Concessionaire shall provide full access to the Authority, Authority's Representative and auditors to all the books and records of the Concessionaire and reasonable facilities for conduct of audit.

11.2 Appointment of auditors

- 11.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputed firms of chartered accountants (the "Panel of Chartered Accountants"). All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

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

All payments required to be made to the Statutory Auditors pursuant to the provisions of this Agreement shall be made by the Concessionaire.

11.3 Certification of claims by Statutory Auditors

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

11.4 Set-off

In the event any amount is due and payable by Authority to the Concessionaire, it may set-off any sums payable to it by the Concessionaire and pay the balance remaining. Any exercise by Authority of its rights under this Article shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

12. Disclaimer

12.1 Disclaimer

- 12.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposals, Scope of the Project, Site, existing structures, local conditions, physical qualities of ground, sub-soil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority/Department makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority / Department in this regard.
- 12.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Article 12.1.1 above and hereby acknowledges and agrees that the Authority/ Department shall not be liable for the same in any manner whatsoever to the Concessionaire, (the Consortium Members and their Associates or any person claiming through or under any of them).
- 12.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Article 12.1.1 above shall not vitiate this Agreement, or render it voidable.
- 12.1.4 In the event that any Party becomes aware of any mistake or error relating to any of the matters set forth in Article 12.1.1 above, that Party shall immediately notify the other Parties, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Article 12.1.4 shall not prejudice the disclaimer of the Authority contained in Article 12.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 12.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority /Department shall not be liable in any manner for such risks or the consequences thereof.

13. Indemnity

13.1 General Indemnity

- 13.1.1 The Concessionaire and the Selected Bidder shall jointly and severally indemnify, defend, save and hold harmless GoWB, the Authority /Department and their officers, servants, agents, other Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "Authority Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire or its Contractors or its officers, employees, agents or representatives or assigns of any of the provisions/obligations under this Agreement, Escrow Agreement, Lease Deed or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or wilful breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 13.1.2 The Authority / Department will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority/ Department of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its duty on the part of the Concessionaire, its subsidiaries, Affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

13.2 Indemnity by the Concessionaire

- 13.2.1 Without limiting the generality of Article 13.1, the Concessionaire and the Selected Bidder jointly and severally shall fully indemnify, hold harmless and defend GoWB, the Authority / the Department and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- a) failure of the Concessionaire or its officers, employees, agents or representatives or assigns to comply with Applicable Laws and Applicable Permits;
 - b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or
 - c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.
 - d) Any damage to the Project Site;
 - e) Any default under the Financing Agreements;

- f) Any claim or demand made by any sub-lessee/licensee for breach of any the terms of sub-lease/sub-license by the Concessionaire or otherwise;
- g) Any breach by the sub-lessee/licensee or user of the Project Facilities;
- h) Any claim or demand made by any third party including any sub-contractor/supplier of the Concessionaire as a result of any action or omission on the part of the Concessionaire including non-payment by the Concessionaire;
- i) Injury to or death of the Concessionaire's personnel/ its Contractor's, agent's or supplier's personnel or third party or damages or loss of property of the Authority or the Project Site or of third parties arising directly or indirectly out of acts or omission of the Concessionaire, its agents, Contractors or supplier or its or their respective officers, directors, employees or servants.

13.2.2 Without limiting the generality of the provisions of this Article 13, the Concessionaire shall fully indemnify, hold harmless and defend GoWB, the Authority / Department and/or Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay or incur 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, designs or processes used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for Authority a licence, at no cost to Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense and without violating the Applicable Laws either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

13.3 Notice and contest of claims

13.3.1 In the event that any Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 13 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute, the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

13.4 Defence of claims

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

indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 13, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

13.4.2 If the Indemnifying Party has exercised its rights under Article 13.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

13.4.3 If the Indemnifying Party exercises its rights under Article 13.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, as and when incurred, unless:

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

Provided that if Sub-Articles (b), (c) or (d) of this Article shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

13.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 13, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as

expressly provided in this Agreement. Provided that if the claim for indemnification arises as a result of any fraud committed by the Concessionaire, the Concessionaire shall be responsible for all losses whether direct, indirect or consequential.

13.6 Survival on Termination

The provisions of this Article 13 shall survive Termination.

14. Force Majeure

14.1 Force Majeure

As used in this Agreement, the expression “**Force Majeure**” or “**Force Majeure Event**” shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Articles 14.2, 14.3 and 14.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “**Affected Party**”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

14.2 Non-Political Event

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

- a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for an aggregate period exceeding 30 (thirty) days in an Accounting Year, and not being an Indirect Political Event set forth in Article 14.3;
- c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by Authority;
- e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

14.3 Indirect Political Event

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

- a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- b) industry-wide or State-wide strikes or industrial action for a period exceeding an aggregate period of 30 (thirty) days in an Accounting Year;
- c) any civil commotion, boycott or political agitation which prevents collection of revenue by the Concessionaire for an aggregate period exceeding 30 (thirty) days in an Accounting Year;

- d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- e) any Indirect Political Event that causes a Non-Political Event; or
- f) any event or circumstances of a nature analogous to any of the foregoing.

14.4 Political Event

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

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

14.5 Duty to report Force Majeure Event

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

- a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 14 with evidence in support thereof;
- b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- d) any other information relevant to the Affected Party's claim.

- 14.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.
- 14.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Article 14.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

14.6 Effect of Force Majeure Event on the Concession

- 14.6.1 Upon the occurrence of any Force Majeure Event prior to the Construction Commencement Date, the period set forth in Article 5 for achieving Conditions Precedent obligations shall be extended by a period equal in length to the duration of the Force Majeure Event.
- 14.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs before COD, the Concession Period and the Scheduled Completion Date shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists.

14.7 Allocation of costs arising out of Force Majeure

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

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

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

14.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, the Authority may at its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith.

14.9 Dispute Resolution

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

14.10 Excuse from performance of obligations

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

- a) Without prejudice to Article 14.6, the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;
- b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party, notice to that effect and shall promptly resume performance of its obligations hereunder.

14.11 Liability for other losses, damages etc.

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

15. Events and Default and Termination

15.1 Concessionaire Event of Default

15.1.1 Save as otherwise provided in this Agreement and subject to Article 5.4.3, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the "Concessionaire Event of Default"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The right to terminate under this Article is over and above the rights available to the Authority under any other provision of the Agreement. The defaults referred to herein shall include:

- a) Concessionaire fails to renew the Performance Security and/or the O&M Performance Security in accordance with the Agreement and keep it in effect for the duration as specified in this Agreement;
- b) The Performance Security and/or O&M Performance Security has been encashed by the Authority and/or appropriated by the Authority in accordance with Article 6.1.1 and 6.1.2 and the Concessionaire fails to replenish or provide fresh Performance Security and/or O&M Performance Security within a Cure Period of 30 (thirty) days;
- c) Subsequent to the replenishment or furnishing of fresh Performance Security and/or O&M Performance Security in accordance with Article 6.1.1 and 6.1.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security and/or O&M Performance Security was appropriated;
- d) The Concessionaire has failed to complete the construction of the Project Facility on the extended day provided by the Authority over and above the Scheduled Completion Date;
- e) The Concessionaire has materially deviated from the project components detailed in the scope of work and approved DPR without the prior written permission from the Authority or its authorized representatives or fails to get the DPR approved by the Project Management Consultant in the manner contained herein;
- f) The Concessionaire abandons or manifests intention to abandon the construction or operation of the Project Facilities without the prior written consent of Authority;
- g) The Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- h) An Escrow Default has occurred and the Concessionaire fails to cure the default within the Cure Period specified in the Escrow Agreement and if no time line is specified within a Cure Period of 15 days;
- i) The Concessionaire fails to submit the agreement entered upon with the end user/ occupant with the Authority's Representative within 15 (fifteen) days from its execution.
- j) The Concessionaire has encroached upon any adjoining land, road, pathway or footpath of the Authority/ Department / GoWB in any manner whatsoever;

- k) At any time from the Appointed Date, the Concessionaire fails to adhere to the requirements for Project Facility and has failed to remedy the same within 60 (sixty) days from the date of Preliminary Default Notice, subject to Article 15.3;
- l) The Concessionaire is in breach of any of its obligations under this Agreement and the same has not been remedied within 60 (sixty) days from the date of the Preliminary Default Notice;
- m) The Concessionaire fails to construct and hand over the Authority's Allocation in accordance with the Agreement;
- n) The Concessionaire encumbers, sub-leases/sub-lets, sub-licenses or deals with the Authority's Allocation or Authority's Allocation Land;
- o) The Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- p) A Change in Ownership has occurred in breach of the provisions of Article 6.3.8 or there is a change in the ownership or control of the Concessionaire otherwise than in accordance with the Agreement;
- q) Failure of the Concessionaire to construct the Project Facility in accordance with the Agreement;
- r) Any representation made or warranty given by the Concessionaire under this Agreement is found to be false or misleading;
- s) A resolution for voluntary winding up has been passed by the shareholders of the Concessionaire;
- t) Any petition for winding up of the Concessionaire has been admitted and liquidator or provisional liquidator has been appointed or the Concessionaire has been ordered to be wound up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Authority provided that, as part of such amalgamation or reconstruction the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Concessionaire under this Agreement;
- u) A default has occurred under any of the Financing Documents and any of the Lenders has recalled its financial assistance from the Concessionaire and demanded payment of the amounts outstanding under the Financing Documents or any of them as applicable;
- v) The Concessionaire has abandoned the Project Facilities;
- w) The Concessionaire has unlawfully repudiated this Agreement or has otherwise expressed an intention not to be bound by this Agreement;
- x) The Concessionaire commits a default under the provisions of this Lease Deed or Escrow Agreement or any other transaction document;
- y) The Concessionaire has suffered an attachment levied on any of its assets which has caused or is likely to cause a Material Adverse Effect on the Project and such attachment has continued for a period exceeding 90 (ninety) days.
- z) The Concessionaire fails to pay the Liquidated Damages within a period of 60 days after issuance of Liquidated Damages Claim Letter or the Liquidated Damages Completion Letter as prescribed in Schedule VIII.

- aa) The Concessionaire fails to pay the Liquidated Damages stipulated in this Agreement within the timeline prescribed therein.

15.2 Authority Event of Default

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

- a) Failure of the Authority to hand over the Project Site to the Concessionaire in terms of this Agreement subject to the Concessionaire having paid the Occupational Charges, the DPR and modifications thereof having been submitted on time by the Concessionaire and approved by the Authority and the Concessionaire having complied with the other obligations thereof;
- b) Failure of the Authority to appoint a Project Management Consultant in terms of this Agreement.

15.3 Termination due to an Event of Default

15.3.1 Upon the occurrence of a Concessionaire Event of Default or an Authority Event of Default, the following procedure shall apply:

- (a) The Party not in default may give a default notice ("Preliminary Default Notice") to the defaulting Party specifying in reasonable detail the Concessionaire Event of Default or Authority Event of Default, as the case may be, and demanding remedy thereof within the Cure Period mentioned in Articles 15.2; and
- (b) During the Cure Period, the Parties shall consult as to what steps are to be taken with a view to:
 - Mitigating the consequence of the default;
 - Curing such Concessionaire Event of Default or Authority Event of Default.

15.3.2 Termination Notice

At the expiry of the Cure Period, if the applicable Concessionaire Event of Default or Authority Event of Default, as the case may be, has not been cured, the Authority or the Concessionaire i.e. the non-defaulting Party shall terminate this Agreement by giving a notice of termination ("Termination Notice") which shall specify the date of termination of the Agreement, which shall be a date occurring not earlier than 60 (sixty) days from the date of Termination Notice ("Termination Date"); the estimated termination payment including the details of computation thereof; and any other relevant information. Provided however that in relation to the default covered under Article 5.4.3, the provisions of Article 5.4.3 shall apply.

15.3.3 Obligation of Parties

Following issue of Termination Notice by either Party, the Parties shall promptly take all such steps as may be necessary or required to ensure that:

- I. until Termination, the Parties shall, to the fullest extent possible, discharge their respective obligations so as to maintain the continued operation of the Project Facilities;
- II. the termination payment, if any, payable by the Authority in accordance with the following Article 15.3.5 is paid to the Concessionaire; and
- III. the Project Facilities are handed back to the Authority as instructed, by the Concessionaire on the Termination Date free from any Encumbrance along with any payment that may be due by the Concessionaire to the Authority.

15.3.4 Withdrawal of Termination Notice

- I. Notwithstanding anything inconsistent contained in this Agreement, if the Party who has been served with the Termination Notice cures the underlying Event of Default to the satisfaction of the other Party at any time before the Termination occurs, the Termination Notice shall be withdrawn by the Party which had issued the same.
- II. Provided that if the Concessionaire is in breach, it shall compensate Authority for any direct costs / consequences occasioned by the Event of Default, which caused the issue of Termination Notice.

15.3.5 Termination Payments

a) Termination Due to Force Majeure Event

- I. If the Termination is due to a Force Majeure Event, compensation payable to the Concessionaire shall be,
 - i. If the Termination is on account of a Non Political Event, an amount equal to lower of the Book Value or 90% of the Debt Due Less any amount due to the Authority by the Concessionaire under this Agreement Less pending insurance claims, Less any amount due to the Authority by the Concessionaire under this Agreement, Less amounts available in the Escrow Account for payment to the Lenders and amounts available for appropriation by the Concessionaire, Less Book Value of the movable assets allowed to be taken by the Concessionaire as per Clause 15.3.6, if any.
 - ii. If the Termination is on account of a Political Event, an amount equal to:
 1. the total Debt Due, Less pending insurance claims, Less any amount due to the Authority by the Concessionaire under this Agreement, Less amounts available in the Escrow Account for payment to the Lenders, Less Book Value of the movable assets allowed to be taken by the Concessionaire as per Clause 15.3.6, if any. plus

2. 100% (one hundred percent) of the Equity subscribed in cash and actually spent on the Project less amounts available in the Escrow Account for appropriation by the Concessionaire.

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover.

For Termination due to Force Majeure Event, the Authority shall release the Performance Security/O& M Security as the case may be after adjusting all sums recoverable by the Authority from the Concessionaire including towards repair/replacement/refurbishment of the Project Facilities as determined by the Authority.

- b) If the Agreement is terminated due to Concessionaire Event of Default before COD then:
 - I. the Concessionaire shall not be entitled to receive any Termination Payment.
 - II. Authority shall invoke the Performance Security.
 - III. Authority shall take entire possession of the Project Site along with any construction. Authority shall have the right to demand the Concessionaire to demolish such construction on the part of the Project Site at the cost of the Concessionaire.
 - IV. The Concessionaire and any person claiming through or under the Concessionaire shall be prohibited from entering upon the Project Site and facilities as mentioned in the above sub article (ii) and dealing with or any part thereof.
- c) If the Agreement is terminated due to Concessionaire Event of Default after COD, then:
 - I. the Concessionaire shall be paid an amount equal to lowest of
 - a. the Book Value i.e. depreciated value of the Project Facilities;
 - b. 80% of the Debt Due less any amount due to the Authority by the Concessionaire under this Agreement, Less amounts available in the Escrow Account for payment to the Lenders, Less Book Value of the movable assets allowed to be taken by the Concessionaire as per Clause 15.3.6, if any;
 - c. the Actual Project Cost, Less amount invested/infused by Authority and grants/incentives/subsidy from GoI/ GoWB, Less amounts available for appropriation by the Concessionaire, Less Book Value of the movable assets allowed to be taken by the Concessionaire as per clause 15.3.6.

Provided, no compensation shall be payable to the Concessionaire if the Concessionaire fails to maintain Insurance Cover. Additionally, no compensation shall be made to the Concessionaire if return on equity for the Project for the period prior to default comes out to be more than 14% as certified by the Statutory Auditor or Additional Auditor as the case may be in accordance with sub-clause (e) herein below.
 - II. Authority shall take entire possession of the Project Site along with any construction.
 - III. Authority shall invoke the O&M Performance Security.

- IV. The Concessionaire and any person claiming through or under the Concessionaire shall be prohibited from entering upon the Project Site and facilities as mentioned in the above sub article (ii) and dealing with or any part thereof.
- d) If the Agreement is terminated due to Authority's Event of Default, then
- I. Upon Termination of this Agreement by the Concessionaire due to an Authority Event of Default, the Concessionaire shall be entitled to receive from the Authority, by way of Termination Payment, a sum equal to:
 - a. the total Debt Due, Less Book Value of the movable assets allowed to be taken by the Concessionaire as per clause 15.3.6, Less amounts available in the Escrow Account for payment to the Lenders less pending insurance claims and amounts due to the Authority from the Concessionaire if any, and
 - b. 100% (one hundred percent) of the Equity subscribed and actually spent on the Project less amounts available in the Escrow Account for appropriation by the Concessionaire.
 - II. The Performance Security and/or the O&M Performance Security, if subsisting at the time of termination, after deducting any amount receivable from the Concessionaire shall be released including costs and expenses incurred/to be incurred towards repair, refurbishment or replacement of the Project Facilities as determined by the Authority.
 - III. Authority shall take entire possession of the Project Site along with any construction.
 - IV. The Concessionaire and any person claiming through or under the Concessionaire shall be prohibited from entering upon the Project Site and facilities as mentioned in the above sub article (iii) and dealing with or any part thereof.
- e) Notwithstanding anything contained to the contrary in the Agreement, all computations required to be made in relation to Termination Payments including calculation of Actual Project Cost, quantum of equity deployed in the Project, Debt Due, etc shall be as per the computation made by the Statutory Auditor. However, in the event, the computation of the Statutory Auditor is not acceptable to the Authority, then such computation shall be referred to the Additional Auditor whose computation shall be final and binding on the Parties and the cost incurred in relation to making such computation by the Additional Auditor shall be borne by the Concessionaire except in case of an Authority Event of Default when the cost shall be shared equally between the Parties.

15.3.6 Payment for Compensation to Lenders

The Concessionaire hereby irrevocably authorises the Authority to pay to the Lenders or at their instruction to any designated bank account in India, the compensation payable to the Concessionaire. The Concessionaire confirms that upon such payment being made, the Authority shall stand duly discharged of its obligations regarding payment of compensation under this Agreement and the charge created by the Concessionaire in favour of the Lenders on any of its assets taken over by the Authority shall stand satisfied and all such assets shall on and from the Transfer Date be free from such charge or any other Encumbrance. The Concessionaire further confirms that payment of compensation by the Authority in accordance with this Article shall be a valid discharge to the Authority in respect of the Authority's obligation regarding payment of compensation to the Concessionaire under this Agreement.

Provided notwithstanding anything inconsistent contained in this Agreement, the Concessionaire/the Lenders as the case may be shall be entitled to remove at its/ their cost all such movables which are not taken over by the Authority and to deal with the same in accordance with their respective rights under law.

Provided further, if there are no amounts outstanding under the Financing Documents and a certificate to that effect issued by the Lenders is furnished by the Concessionaire to the Authority, or there is no debt funding for the Project, the compensation shall be paid by the Authority to the Concessionaire directly.

15.4 Rights of the Authority on Termination

15.4.1 Upon Termination of this Agreement for any reason whatsoever, the Authority's Representative shall have the power and authority to:

- I. enter upon and take possession and control of the Project Facilities forthwith subject to the sub-lease / tenancy granted in favour of the end users /sub-lessees /tenants till then granted;
- II. prohibit the Concessionaire from entering upon / dealing with the Project Facilities;
- III. shall have the right over the payments which are liable to be paid to the Authority as per the terms of this Agreement.
- IV. determine the Lease Deed and the sub-leases executed with the users of the Project Facilities. Pursuant to the determination of the sub-leases, the Authority or its nominee shall, if required by the users, execute lease deeds/sub-lease deeds directly in favour of the users for the unexpired term of the original sub-leases on the same terms and conditions as contained in the original sub-leases executed between the Concessionaire and the user and conditions not detrimental either to the Authority or any other Government Agency.

15.4.2 Notwithstanding anything contained in this Agreement, Authority or Authority's Representative shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to, obligations as to compensation for loss of employment, continuance or regularisation of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Concessionaire/ contractor in connection with the Project, and the hand back of the Project Facilities and Project Site by the Concessionaire to Authority shall be free from any such obligation.

15.5 Accrued Right of Parties

Notwithstanding anything to the contrary contained in this Agreement, Termination pursuant to any of 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. The rights and obligations of either Party under this Agreement, including without limitation those relating to the Termination Payment, shall survive the Termination but only to the extent such survival is necessary for giving effect to such rights and obligations.

Further, the Authority shall be entitled to adjust all sums payable by the Concessionaire to the Authority under this Agreement including any amounts due as Damages/from the Termination Payments.

16. Handover of Project Site in the event of Termination

16.1 Handover of Project Site in the event of Termination

16.1.1 Ownership

Subject to the terms of the Agreement, the ownership of the Project Site and the Project Facilities, including all improvements made therein by the Concessionaire, shall at all times vest with the Authority.

16.1.2 Concessionaire's Obligations

- a) The Concessionaire shall on the Termination Date,
 - hand back, subject to the sub-lease / tenancy granted in favour of the end users / sub-lessees / tenancies till then granted, vacant and peaceful possession of the Project Site free from Encumbrances, with all the Project Facilities to the Authority, in a good operable condition as per terms of this Agreement. The Concessionaire agrees that Authority's Representative shall not be required to issue any notice to the Concessionaire for handover, upon such Termination of the Agreement.
 - Handover to the Authority or its nominated agency all Documentation, including as built drawings, manuals, designs, documents, information and records relating to the Project Facility;
 - Assign to the Authority or its nominated agency, all the unexpired guarantees and warranties by contractors and suppliers and all insurance policies.
- b) The Concessionaire hereby acknowledges Authority's rights specified in Article 15.4 and Article 16.1.3 enforceable against it upon the Termination and its corresponding obligations arising therefrom. The Concessionaire undertakes to comply with and discharge promptly all such obligations.
- c) The Concessionaire undertakes to incorporate the rights and powers of the Authority as per terms of this Agreement and also specifically those in Article 15.4 and Article 16.1.3 into all agreements which the Concessionaire shall enter into with the end user/ occupants for grant of right to use of the Project Facilities developed on the Project Site and Concessionaire shall be responsible and liable for ensuring compliance of such terms by all such occupants and users.

16.1.3 Authority Rights

- a) The Authority shall have exclusive possession and control of the Project Facilities and the Project Site after the Termination of the Agreement, subject to the sub-lease / tenancy granted in favour of the end users/ sub-lessees/ tenants till then granted. For the purpose of clarity, the Agreement shall expire at 12.00 AM on the Termination Date of the Agreement.
- b) It is expressly agreed that upon the Termination of the Agreement, the Concessionaire is prohibited from having access to or entering upon the Project Site and Project Facilities and dealing with or any part thereof and the Authority's Representative shall be entitled to prevent any such access or entry;
- c) The Authority's Representative shall, immediately after the Termination of the Agreement, have the right to evict the Concessionaire from the Project Facilities without any further notice to any such persons and Authority's Representative shall be entitled to forcefully

remove the Concessionaire and its materials from the Project Site and the Concessionaire shall not be entitled to make any claim for any damages as a result of any action taken by Authority.

- d) After the Termination of the Agreement the continued occupation or use of Project Site and Project Facilities by the Concessionaire and such occupants/users which fail to execute lease deed/sub-lease deed in accordance with Clause 15.4.1(iv) shall be considered as illegal and unauthorized occupation upon the property of the Authority; the Concessionaire and/or such occupants/users shall be liable to pay to the Authority, for every day of delay, *mesne* profits computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the date of eviction of the Concessionaire or a sum of Rs. _____ per day, whichever is higher till the resumption of actual physical possession by the Authority's Representative.
- e) Authority shall be entitled to recover from the Concessionaire all costs and expenses incurred for taking over the Project Site or the Project Facilities in the event the Concessionaire does not handover vacant possession of the Project Site or Project Facilities to Authority immediately on the Termination Date.
- f) The Authority shall be entitled to call upon the Concessionaire to complete the outstanding works including any unfinished repairs, replacements or modifications and repair any condition that would impair the safe performance or operation of the Project. Upon being so called upon by the Authority, the Concessionaire shall immediately take steps to complete and shall at its own cost complete the outstanding works.

16.2 Handover of Project Site on expiry of the Concession Agreement

16.2.1 Ownership

Subject to the terms of the Agreement, the ownership of the Project Site and the Project Facilities, including all improvements made therein by the Concessionaire, shall at all times vest with the Authority.

16.2.2 Concessionaire's Obligations

- a) The Concessionaire shall on the expiry of the Concession Period, hand back vacant and peaceful possession of the Project Site free from all Encumbrances, with all the Project Facilities to the Authority, in a good and operable condition as per terms of this Agreement. The Concessionaire agrees that Authority's Representative shall not be required to issue any notice to the Concessionaire for handover, upon expiry of the Lease Deed.
- b) At least one year before the expiry of the Concession Period, the Concessionaire should notify all the occupants and users in the Project Facilities about the date of the expiry of the Concession Period and the handover of the Project Facilities to the Authority and shall notify the Authority rights and powers as mentioned under this Agreement.
- c) At least 6 (six) months before the expected expiry of the Concession Period a joint inspection of the Project Facilities shall be undertaken by Authority and the Concessionaire. Authority shall, within 45 (forty five) days of such inspection prepare and furnish to the Concessionaire a list of works / jobs ("Project Handover Requirements"). The Concessionaire shall promptly undertake and complete such works / jobs at least 3 (three) months prior to the expected expiry of the Concession Period and ensure that the

Project Facilities continue to meet such requirements until the same are handed back to Authority.

- d) Handover to the Authority or its nominated agency all Documentation, including as built drawings, manuals, designs, documents, information and records relating to the Project Facility;
- e) Assign to the Authority or its nominated agency, all the unexpired guarantees and warranties by contractors and suppliers and all insurance policies.

16.2.3 Authority Rights

- a) The Authority shall have exclusive possession and control of the Project Facilities and the Project Site after the expiry of the Concession Period. For the purpose of clarity, Agreement shall expire at 12.00 AM on the Termination Date of the Agreement.
- b) It is expressly agreed that upon expiry of the Concession Period the Concessionaire and any person claiming through or under the Concessionaire are prohibited from having access to or entering upon the Project Site and Project Facilities and dealing with or any part thereof and Authority's Representative shall be entitled to prevent any such access or entry;
- c) Authority's Representative shall, immediately after expiry of the Concession Period, have the right to evict the Concessionaire/ occupants/ end users/ from the Project Facilities without any further notice to any such persons and Authority's Representative shall be entitled to forcefully remove any such persons and their materials from the Project Site and such persons shall not be entitled to make any claim for any damages as a result of any action taken by Authority.
- d) After expiry of the Concession Period, the continued occupation or use of Project Site and Project Facilities by the Concessionaire/ any occupant/ end user shall be considered as illegal and unauthorized occupation upon the property of the Authority; the Concessionaire shall be liable to pay to Authority, for every day of delay, *mesne* profits computed at the rate of the average daily profits earned during the 3 (three) years immediately preceding the date of eviction of the Concessionaire/ any occupant/ end user and resumption of exclusive and vacant possession by Authority's Representative or a sum of Rs. _____ per day, whichever is higher.
- e) The Authority shall immediately after the expiry of the Concession period have the power to remove or cause to be removed or dispose of any property remaining in the Project Site or Project Facilities after expiry of the Concession Period in a public auction and retain the revenue from such auction.
- f) The Authority shall not notify and are not obliged to notify the Concessionaire / end user / occupants about the action to take over the Project Site or Project Facilities on the date of the expiry of the Concession Period and the Authority shall not in any manner whatsoever be liable for any liabilities, claims, damages, losses, etc. arising from such action for takeover of Project Site and the Project Facilities.
- g) Authority shall be entitled to recover from the Concessionaire all costs and expenses incurred for taking over the Project Site or the Project Facilities in the event the Concessionaire does not handover vacant possession of the Project Site or Project Facilities to Authority immediately upon expiry of the Concession Period.
- h) The Authority shall be entitled to call upon the Concessionaire to complete the outstanding works including any unfinished repairs, replacements or modifications and

repair any condition that would impair the safe performance or operation of the Project. Upon being so called upon by the Authority, the Concessionaire shall immediately take steps to complete and shall at its own cost complete the outstanding works.

16.3 Vesting Certificate

The handover of all rights, title and interest in the Project whether pursuant to expiry of the Concession Period or termination of the Agreement shall be deemed to be complete on the date when all of the requirements under Article 16.1 or Article 16.2 have been fulfilled, and Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule VI (the "**Vesting Certificate**"), which will have the effect of constituting evidence of handover by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the handover requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of the Project on the footing that all handover requirements have been complied with by the Concessionaire.

17. Dispute Resolution

17.1 Dispute Resolution

17.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "Dispute") shall, in the first instance, be attempted to be resolved amicably.

17.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute. If the Disputes cannot be amicably resolved within 30 (thirty) days from the date on which the Dispute arose, the same shall be referred to arbitration.

17.2 Arbitration

17.2.1 Any Dispute which is not resolved amicably within the period as provided above, shall be finally decided by reference to arbitration.

(a) the dispute shall be settled under the rules of arbitration of the Arbitration & Conciliation Act, 1996,

(b) the dispute shall be settled by a sole arbitrator to be appointed as per the provisions of the Arbitration & Conciliation Act, 1996,

(c) the arbitration shall be held at Kolkata, and Courts at Kolkata shall alone have jurisdiction (to the exclusion of all other Courts) entertain all disputes arising out of the Agreement.

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

17.3 Performance during Dispute

17.3.1 Pending the submission of and/or decision on a Dispute and until the decision of the conciliation process or arbitration process or adjudication process; the Parties shall continue to perform their respective obligations under this Agreement without prejudice to a final adjustment in accordance with such award.

18. Representations and Warranties

18.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

- a) it is duly organised, validly existing and in good standing under the laws of India;
- b) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- c) it has taken all necessary corporate and other action under Applicable Laws and its constitutional documents to authorise the execution, delivery and performance of this Agreement;
- d) it has the financial standing and capacity to undertake the Project;
- e) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- f) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of the Concessionaire's Memorandum and Articles of Association or its constitutional documents or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets are bound or affected;
- g) 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 constitute Concessionaire Event of Default or which individually or in the aggregate may result in Material Adverse Effect;
- h) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Agency which may result in Material Adverse Effect;
- i) it has complied with all Applicable Laws and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have Material Adverse Effect;
- j) all rights and interests of the Concessionaire in and to the Project Facilities shall pass to and vest in the Authority on the Termination Date or expiry of the Concession Period, free and clear of all Encumbrances without any further act or deed on the part of the Concessionaire;
- k) no representation or warranty by the Concessionaire contained herein or in any other document furnished by it to the Authority, Department or to any Government 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;
- l) no bribe or illegal gratification has been paid or will be paid in cash or kind by or on behalf of the Concessionaire to any person to procure the Development Rights under this Agreement.
- m) Without prejudice to any express provision contained in this Agreement, 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 Project Site and the information provided by Authority's Representative, and has determined to its satisfaction the nature and extent of risks and hazards as are likely to arise or may be faced by the

Concessionaire in the course of performance of its obligations hereunder, such examination/ review having included but not limited to the following:

- I. The form and nature of the Project Site, including the sub-surface conditions,
 - II. The hydrological and climatic conditions,
 - III. The extent and nature of the work and materials necessary for the execution and completion of the works, and the remedying of any defects, and
 - IV. The means of access to the Project Site.
- n) The Concessionaire also acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth above and hereby confirms that the Authority or Authority's Representative shall not be liable for the same in any manner whatsoever to the Concessionaire.

18.2 Representations and Warranties of the Authority

18.2.1 The Authority represents and warrants to the Concessionaire that:

- a) The Authority has the full power and authority to grant the Development Rights for proposed Project Site;
- b) This Agreement shall constitute the Authority's legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

18.3 Obligation to Notify Change

18.3.1 In the event that any of the representations or warranties made / given by a Party ceases to be true or stands changed, the Party who had made such representation or given such warranty shall promptly notify the other of the same. This shall not however affect any right or remedy which the other Party may have under the Agreement or under Applicable Laws.

19. Miscellaneous

19.1 Assignment and Charges

- a) The Concessionaire shall not assign in favour of any person this Agreement or the rights, benefits and obligations hereunder save and except with prior consent of the Authority. In the event Authority consents for assigning such rights, benefits and obligations, the Concessionaire shall remain solely responsible to meet the requirements and specifications mentioned under this Agreement and thereafter.
- b) The Concessionaire shall not create nor permit to subsist any Encumbrance over the Project Site.
- c) Restraint set forth in Articles (a) and (b) above shall not apply to:
 - I. Liens / encumbrances arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Concessionaire, not as a result of any default of the Concessionaire;
 - II. Pledges / hypothecation of goods / moveable assets, revenue and receivables as security for indebtedness, in favour of the Lenders for the Project;
 - III. Assignment of rights and interest of the Concessionaire to or in favour of the Lenders as security for financing provided by the Lenders under the Financing Document;
 - IV. Allotment/ sub-leases, transfers in the nature of license carried out by the Concessionaire in accordance to the provisions of this Agreement.

19.2 Interest and Right of Set Off

- a) Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at prevailing Benchmark prime lending rate (SBAR) of State Bank of India per annum plus 2% from the due date for payment thereof until the same is paid to or otherwise realised by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off.
- b) Provided the stipulation regarding interest for delayed payments contained in this Article shall neither be deemed nor construed to authorise any delay in payment of any amount due by a Party nor be deemed or construed to be a waiver of the underlying breach of payment obligations.

19.3 Governing Law and Jurisdiction

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

19.4 Waiver

- a) Waiver by any Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
 - I. shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions or obligations under this Agreement;
 - II. shall not be effective unless it is in writing and executed by a duly authorised representative of such Party; and

III. shall not affect the validity or enforceability of this Agreement in any manner.

- b) Neither the failure by any Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation hereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed as waiver / breach of any terms, conditions or provisions of this Agreement.

19.5 Survival

Termination of this Agreement:

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

19.6 Amendments

This Agreement and the Schedules together constitute a complete and exclusive understanding of the terms of the Agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless agreed to by all the Parties hereto and evidenced in writing.

19.7 Notices

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

If to the Authority

(Authorized Representative),

_____ (Address)

_____ (facsimile)

If to the Concessionaire:

Authorised Representative,

_____ (Address)

_____ (facsimile)

If to the Confirming Party:

_____ (Designation)

_____ (Address)

_____ (facsimile)

Or such address or facsimile number as may be duly notified by the respective Parties from time to time, and shall be deemed to have been made or delivered

- I. in the case of any communication made by letter, when delivered by hand, by recognized international courier or by mail (registered, return receipt requested) at that address, and
- II. in the case of any communication made by facsimile, when transmitted properly addressed to such facsimile number.

19.8 Severability

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

19.9 Language

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

19.10 Exclusion of Implied Warranties etc.

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

19.11 Counterparts

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

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

SIGNED SEALED AND DELIVERED BY .

For and on behalf of the Governor of West Bengal by:

(Signature)

(Name)

_____, Department of Micro, Small & Medium Enterprises & Textiles, Government of West Bengal

For and on behalf of Concessionaire by:

(Signature)

(Name)

(Designation)

For and on behalf of the Confirming Party by:

In the presence of:

1.

20. Schedules

20.1 Schedule I: Details of Project Site

1. The proposed site is spread over an area of around 3.78 acres in Sector V, Salt Lake with 12 meter wide approach road
2. The site is at a distance of 7 Kms from Bidhan Nagar Railway Station; 15 Kms from Netaji Subhash Chandra Bose International Airport; 19 Kms from Kolkata Port
3. The proposed park is located in close proximity to Kolkata, a major production and trading hub for readymade garments, estimated to be worth INR 26,000 Cr.³
4. The site is also located in proximity to Paridhan Park in Belehata and proposed Garment Park in Rajarhat (EIGMEF) ensuring access to finished textile products/ apparels for traders/ wholesalers

³ Source: Discussions with Industry Associations

20.2 Schedule II- Proforma of Performance Security

(Proforma of Bank Guarantee)⁴

(To be executed on stamp paper of appropriate value)

B.G. No.

Dated: [●]

Secretary, Department of Micro, Small & Medium Enterprises & Textiles

1. In consideration of the Governor of West Bengal, represented by the Department of Micro, Small & Medium Enterprises & Textiles (hereinafter referred to as "**Authority**", which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to issue, letter of award of contract ("**LOA**") in favour of _____ a company/partnership registered under the Companies Act, 2013/Limited Liability Partnership Act, 2008 or any re-enactments thereof and having its registered office at _____ (hereinafter referred to as the "Selected Bidder", which expression shall unless it be repugnant to the subject or context thereof include its successors and permitted assigns) and such Selected Bidder having formed a SPV (hereinafter referred to as "**the Concessionaire**") which has been granted Development Rights over the Project Site being Dag Nos. ____, ____ and ____ at Mouza - _____, Khatian No. _____, P.S.- _____, Gram Panchayat ____, admeasuring 3.78 acres more or less (hereinafter referred to as the "Project") pursuant to the RFP document dated [●] issued in respect of the Project and other related documents (hereinafter collectively referred to as "Bidding Documents"), we [Name of the Bank] having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Article 6.1.1 of the Concession Agreement annexed to the RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and performance of the obligations of the Concessionaire as contained in the Concession Agreement and unconditionally and irrevocably undertake to pay forthwith to Authority an amount of Rs 20,00,00,000/- (Rupees Twenty Crores only) (hereinafter referred to as the "**Guarantee**") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Concessionaire if the Concessionaire shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by Authority stating that the Concessionaire is in default of the due and faithful fulfilment and performance of the obligations of the Concessionaire contained in the Concession Agreement shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay at Kolkata the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without assigning any reason or reference to the Concessionaire or any other person and irrespective of whether the claim of Authority is disputed by the Concessionaire or not merely on the first demand from Concessionaire stating that the amount claimed is due to Authority by reason of failure of the Concessionaire to fulfill and perform its obligations contained in the Concession Agreement for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [●].

⁴To be issued by a Nationalized Bank in India

4. This Guarantee shall be irrevocable and remain in full force for a period of 1 year.
5. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without assigning any reason or reference to the Concessionaire or any other person and further agree that Authority shall be the sole judge to decide as to whether the Concessionaire is in default of due and faithful fulfilment and performance of its obligations contained in the Concession Agreement and the decision of Authority that the Concessionaire is in default as aforesaid shall be final and binding on us, notwithstanding any differences between Authority and the Concessionaire or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire or the Bank or any absorption, merger or amalgamation of the Concessionaire or the Bank with any other person.
7. In order to give full effect to this Guarantee, Authority shall be entitled to treat the Bank as the principal debtor. Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Concession Agreement or the period for fulfilment and compliance with all or any of the terms and conditions contained in the said Concession Agreement by the said Concessionaire or to postpone for any time and from time to time any of the powers exercisable by it against the said Concessionaire and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Concession Agreement or the securities available to Authority, and the Bank shall not be released from its liability under these presents by any exercise by Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Concessionaire or any other forbearance, act or omission on the part of Authority or any indulgence by Authority to the said Concessionaire or by any change in the constitution of Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for Authority to proceed against the said Concessionaire before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Department in writing.
12. We undertake to renew the Guarantee promptly and before the expiry of the term of the Guarantee on the same terms and conditions as contained herein.
13. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by _____ Bank

By the hand of Mr/Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

20.3 Schedule III - Proforma of O&M Performance Security

(Proforma of Bank Guarantee)⁵

(To be executed on stamp paper of appropriate value)

B.G. No.

Dated: [•]

Secretary, Department of Micro, Small & Medium Enterprises & Textiles

1. In consideration of the Governor of West Bengal, represented by the Department of Micro, Small & Medium Enterprises & Textiles having its office at _____ (hereinafter referred to as "Authority", which expression shall unless it be repugnant to the subject or context thereof include its successors and assigns) having agreed to issue, letter of award of contract ("LOA") in favour of _____ a company /limited liability partnership registered under the Companies Act, 2013/Limited Liability Partnership Act, 2008 or any re-enactments thereof and having its registered office at _____ (hereinafter referred to as the "Selected Bidder", which expression shall unless it be repugnant to the subject or context thereof include its executors, administrators, successors and assigns) and such Selected Bidder having formed a SPV (hereinafter referred to as "the Concessionaire") which has been granted Development Rights over the Project Site, admeasuring 3.78 acres more or less (hereinafter referred to as the "Project") pursuant to the RFP document dated [•] issued in respect of the Project and other related documents (hereinafter collectively referred to as "Bidding Documents"), we [Name of the Bank] having our registered office at _____ and one of its branches at _____ (hereinafter referred to as the "Bank"), at the request of the Bidder, do hereby in terms of Article 6.1.2 of the Concession Agreement annexed to the RFP document, irrevocably, unconditionally and without reservation guarantee the due and faithful fulfilment and performance of the obligations of the Concessionaire as contained in the Concession Agreement and unconditionally and irrevocably undertake to pay forthwith to Authority an amount of Rs[•]/- (Rupees [•] only) (hereinafter referred to as the "Guarantee") as our primary obligation without any demur, reservation, recourse, contest or protest and without reference to the Concessionaire if the Concessionaire shall fail to fulfil or comply with all or any of the terms and conditions contained in the said Bidding Documents.
2. Any such written demand made by Authority stating that the Concessionaire is in default of the due and faithful fulfilment and performance of the obligations of the Concessionaire contained in the Concession Agreement shall be final, conclusive and binding on the Bank.
3. We, the Bank, do hereby unconditionally undertake to pay at Kolkata the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without assigning any reason or reference to the Concessionaire or any other person and irrespective of whether the claim of Authority is disputed by the Concessionaire or not merely on the first demand from Authority stating that the amount claimed is due to Authority by reason of failure of the Concessionaire to fulfil and perform its obligations contained in the Concession Agreement for any reason whatsoever. Any such demand made on the Bank shall be conclusive as regards amount due and payable by the Bank under this Guarantee. However, our liability under this Guarantee shall be restricted to an amount not exceeding [•].
4. This Guarantee shall be irrevocable and remain in full force for a period of 5 (five) years.

⁵To be issued by a Nationalized Bank in India

5. We, the Bank, do hereby unconditionally undertake to pay the amounts due and payable under this Guarantee without any demur, reservation, recourse, contest or protest and without assigning any reason or reference to the Concessionaire or any other person and further agree that Authority shall be the sole judge to decide as to whether the Concessionaire is in default of due and faithful fulfilment and performance of its obligations contained in the Concession Agreement and the decision of Authority that the Concessionaire is in default as aforesaid shall be final and binding on us, notwithstanding any differences between Authority and the Concessionaire or any dispute pending before any Court, Tribunal, Arbitrator or any other authority.
6. The Guarantee shall not be affected by any change in the constitution or winding up of the Concessionaire or the Bank or any absorption, merger or amalgamation of the Concessionaire or the Bank with any other person.
7. In order to give full effect to this Guarantee, Authority shall be entitled to treat the Bank as the principal debtor. Authority shall have the fullest liberty without affecting in any way the liability of the Bank under this Guarantee from time to time to vary any of the terms and conditions contained in the said Concession Agreement or the period for fulfillment and compliance with all or any of the terms and conditions contained in the said Concession Agreement by the said Concessionaire or to postpone for any time and from time to time any of the powers exercisable by it against the said Concessionaire and either to enforce or forbear from enforcing any of the terms and conditions contained in the said Concession Agreement or the securities available to Authority, and the Bank shall not be released from its liability under these presents by any exercise by Authority of the liberty with reference to the matters aforesaid or by reason of time being given to the said Concessionaire or any other forbearance, act or omission on the part of Authority or any indulgence by Authority to the said Concessionaire or by any change in the constitution of Authority or its absorption, merger or amalgamation with any other person or any other matter or thing whatsoever which under the law relating to sureties would but for this provision have the effect of releasing the Bank from its such liability.
8. Any notice by way of request, demand or otherwise hereunder shall be sufficiently given or made if addressed to the Bank and sent by courier or by registered mail to the Bank at the address set forth herein.
9. We undertake to make the payment on receipt of your notice of claim on us addressed to [name of Bank along with branch address] and delivered at our above branch who shall be deemed to have been duly authorised to receive the said notice of claim.
10. It shall not be necessary for Authority to proceed against the said Concessionaire before proceeding against the Bank and the Guarantee herein contained shall be enforceable against the Bank, notwithstanding any other security which Authority may have obtained from the said Bidder or any other person and which shall, at the time when proceedings are taken against the Bank hereunder, be outstanding or unrealised.
11. We, the Bank, further undertake not to revoke this Guarantee during its currency except with the previous express consent of the Department in writing.
12. We undertake to renew the Guarantee promptly and before the expiry of the term of the Guarantee on the same terms and conditions for an amount as required by the Department for successive periods of 5 (five) years till the expiry of the Concession Period.

13. The Bank declares that it has power to issue this Guarantee and discharge the obligations contemplated herein, the undersigned is duly authorised and has full power to execute this Guarantee for and on behalf of the Bank.

Signed and Delivered by _____ Bank

By the hand of Mr./Ms _____, its _____ and authorised official.

(Signature of the Authorised Signatory)

(Official Seal)

20.4 Schedule IV: Escrow Agreement

THIS ESCROW AGREEMENT is entered into on this the day of 20....

AMONGST

1. LIMITED, a company/limited liability partnership incorporated under the provisions of the Companies Act, 2013/Limited Liability Partnership Act, 2008 and having its registered office at and represented by _____ being the authorized signatory for and on behalf of the said company (hereinafter referred to as the “Concessionaire” which expression shall, unless repugnant to the context or meaning thereof, include its successors, and permitted assigns);
2.name and particulars of Lenders’ Representative and having its registered office atacting for and on behalf of the Lenders as their duly authorised agent with regard to matters arising out of or in relation to this Agreement (hereinafter referred to as the “**Lenders’ Representative**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns);
3.name and particulars of the Escrow Bank and having its registered office at(hereinafter referred to as the “Escrow Bank” which expression shall, unless repugnant to the context or meaning thereof, include its successors and substitutes); and
4. Governor of West Bengal represented by _____, Secretary, Department of Micro, Small & Medium Enterprises & Textiles and having its office at _____ (hereinafter referred to as “Authority” which expression shall, unless repugnant to the context or meaning thereof, include its successors and assigns)

WHEREAS

- A. The Authority had entered into a Concession Agreement dated with the Concessionaire (the “Concession Agreement”) to develop a apparel wholesale hub at Sector V, Salt Lake, West Bengal through Public Private Partnership (PPP), and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- B. Lenders have agreed to finance the Project in accordance with the terms and conditions set forth in the Financing Agreements.
- C. The Concession Agreement requires the Concessionaire to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

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

1. Definitions and interpretation

I. Definitions

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

“**Agreement**” means this Escrow Agreement and any amendment thereto made in accordance with the provisions contained herein;

“**Business Day**” shall mean the day on which banks in Kolkata are open for transaction of normal banking business.

“Cure Period” means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Concessionaire, and shall commence from the date on which a notice is delivered by the Authority or the Lenders’ Representative, as the case may be, to the Concessionaire asking the latter to cure the breach or default specified in such notice;

“Concession Agreement” means the Concession Agreement referred to in Recital (A) of this Agreement and annexed hereto as Annex-A, and shall include all of its Recitals and Schedules and any amendments made thereto in accordance with the provisions contained in this behalf therein;

“Escrow Account” means an escrow account established in terms of and under this Agreement, and shall include the Sub-Accounts;

“Escrow Default” shall have the meaning ascribed thereto in Article 6.1 of this Agreement;

“Lenders’ Representative” means the person referred to as the Lenders’ Representative in the foregoing Recitals;

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

“Payment Date” means, in relation to any payment specified in Article 4.1 of this Agreement, the date(s) specified for such payment; and

“Sub-Accounts” means the respective Sub-Accounts of the Escrow Account, into which the monies specified in Article 4.1 of this Agreement would be credited every month and paid out if due, and if not due in a month then appropriated proportionately in such month and retained in the respective Sub Accounts and paid out therefrom on the Payment Date(s).

“Subordinated Debt” shall mean the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

- a. the principal amount of debt provided by Lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Lenders; and
- b. all accrued interest on the debt referred to in sub-article (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 Transfer 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’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken.

II. Interpretation

- a. References to Lenders’ Representative shall, unless repugnant to the context or meaning thereof, mean references to the Lenders’ Representative, acting for and on behalf of Lenders.
- b. The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Concession Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Concession Agreement.

- c. References to Articles are, unless stated otherwise, references to Articles of this Agreement.
- d. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this Agreement.
- e. Capitalised words not defined herein shall have the meaning provided in the Concession Agreement.
- f. Requirement of obtaining approval/consent in the Agreement shall refer to the prior approval in writing from the Party concerned.

2. Escrow Account

2.1. Escrow Bank to act as trustee

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

2.1.2 The Concessionaire hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for Authority, the Lenders' Representative and the Concessionaire, and applied in accordance with the terms of this Agreement. No person other than Authority, the Lenders' Representative and the Concessionaire shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2. Acceptance of Escrow Bank

The Escrow Bank hereby agrees to act as such and to accept all payments and other amounts to be delivered to and held by the Escrow Bank pursuant to the provisions of this Agreement. The Escrow Bank shall hold and safeguard the Escrow Account during the term of this Agreement and shall treat the amount in the Escrow Account as monies deposited by the Concessionaire, Lenders or Authority with the Escrow Bank. In performing its functions and duties under this Agreement, the Escrow Bank shall act in trust for the benefit of, and as agent for the Authority, the Lenders' Representative and the Concessionaire or their nominees, successors or assigns, in accordance with the provisions of this Agreement.

2.3. Establishment and operation of Escrow Account

- i. Within 30 (thirty) days from the date of this Agreement, and in any case prior to the Construction Commencement Date, the Concessionaire shall open and establish the Escrow Account, in consultation with the Authority, with the (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- ii. The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.
- iii. The Escrow Bank and the Concessionaire shall, after consultation with the Lenders' Representative and Authority, agree on the detailed mandates, terms and conditions,

and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions, or procedures, this Agreement shall prevail.

2.4. Escrow Bank's Fee

The Escrow Bank shall be entitled to receive its fee and expenses in an amount, and at such times, as may be agreed between the Escrow Bank and the Concessionaire. For the avoidance of doubt, such fee and expenses shall form part of the O&M Expenses and shall be appropriated from the Escrow Account in accordance with Article 4.1 of this Agreement.

2.5. Right of the Parties

The rights of Authority, the Lenders' Representative and the Concessionaire in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the Authority, the Lenders' Representative and the Concessionaire shall have no other rights against or to the monies in the Escrow Account.

3. Deposits into Escrow Account

3.1. Deposits by Concessionaire

The Concessionaire agrees and undertakes that it shall deposit into and/or credit the Escrow Account with:

- a. all monies received in relation to the Project from any source, including the Lenders and lenders of Subordinated Debt;
- b. all funds received by the Concessionaire from its share-holders, in any manner or form;
- c. all revenues levied and collected by the Concessionaire and all income relating to the Project;
- d. any other revenues, rentals, deposits or capital receipts, as the case may be, from or in respect of the Project; and
- e. all proceeds received pursuant to any insurance claims.
- f. all grants, funds, subsidies / incentives received from GoI, GoWB or any other government authority in connection with the Project

3.2. Deposits by Authority

Authority agrees and undertakes that, as and when due and payable, it shall deposit into and/or credit the Escrow Account with:

- a. Termination Payments

provided that, notwithstanding the provisions of Article 5.1.1, Authority shall be entitled to appropriate from the aforesaid amounts, any concession fee due and payable to it by the Concessionaire and the balance remaining shall be deposited into the Escrow Account.

- b. Payment of set-off (if any) under Article 11.4 of the Concession Agreement.

3.3. Deposits by Lenders

The Lenders' Representative agrees, confirms and undertakes that the Lenders shall deposit into and/or credit the Escrow Account with all disbursements made by them in relation to or in respect of the Project; notwithstanding anything to the contrary contained in this Agreement.

3.4. Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate there from the fee and expenses due to it from the Concessionaire in relation to the Escrow Account in accordance with Article 2.4 and 4.1 of this Agreement.

4. Withdrawals from Escrow Account

4.1. Withdrawals during Concession Period

- i. The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*, that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month then appropriated proportionately in such month and retained in the Escrow Account and paid out there from in the month when due:
 1. all taxes due and payable by the Concessionaire for and in respect of the Project;
 2. all payments relating to construction of the Project Facilities, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;
 3. Annual Lease Rent as per Schedule VIII of the Concession Agreement;
 4. all payments and Damages certified by Authority as due and payable to it by the Concessionaire;
 5. O&M Expenses;
 6. monthly proportionate provision of Debt Service due in an Accounting Year;
 7. monthly proportionate provision of debt service payments due in an Accounting Year in respect of Subordinated Debt;
 8. any reserve requirements set forth in the Financing Agreements; and
 9. balance, if any, in accordance with the instructions of the Concessionaire
- ii. No later than 60 (sixty) days prior to the commencement of each Accounting Year, the Concessionaire shall provide to the Escrow Bank, with prior written approval of the Lenders' Representative and Authority, details of the amounts likely to be required for each of the payment obligations set forth in this Article 4.1; provided that such amounts may be subsequently modified, with prior written approval of the Lenders' Representative and Authority, if fresh information received during the course of the year makes such modification necessary.
- iii. No cash withdrawal from the Escrow Account shall be permissible.

4.2. Withdrawals upon Termination

- i. Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:
 - a) all taxes due and payable by the Concessionaire for and in respect of the Project;
 - b) Outstanding payment of Annual lease Rent (for the Concession Year in which the Termination has occurred);

- c) all payments and Damages certified by Authority as due and payable to it by the Concessionaire;
 - d) outstanding Debt Service including the balance of Debt Due;
 - e) outstanding Subordinated Debt;
 - f) incurred or accrued O&M Expenses;
 - g) any other payments required to be made under this Agreement; and
 - h) balance, if any, in accordance with the instructions of the Concessionaire:
- ii. No appropriations shall be made under sub-article (g) of Article i of this Agreement until a Vesting Certificate has been issued by Authority under the provisions of Article 16.2 of the Concession Agreement.

4.3. Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Articles 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4. Application of insurance proceeds

Notwithstanding anything in this Agreement, the proceeds from all insurance claims, except life and injury, shall be deposited into and/or credited to the Escrow Account and utilised for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project Facilities, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

5. Obligations of Escrow Bank

5.1. Segregation of funds

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

5.2. Notification of balances

7 (seven) Business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Concessionaire and/or the Lenders' Representative as to the relevant Payment Dates), the Escrow Bank shall notify the Lenders' Representative and Authority of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding Business Day.

5.3. Communication and notices

In discharge of its duties and obligations hereunder, the Escrow Bank:

- a) Shall always act only in accordance with the instructions in writing of the Concessionaire;
- b) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Concessionaire upon a certificate signed by or on behalf of the Concessionaire;

- c) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- d) shall, within 5 (five) Business Days after receipt, deliver a copy to the Lenders' Representative and Authority of any notice or document received by it in its capacity as the Escrow Bank from the Concessionaire or any other person hereunder or in connection herewith; and
- e) shall, within 5 (five) Business Days after receipt, deliver a copy to the Concessionaire of any notice or document received by it from the Lenders' Representative or Authority in connection herewith.
- f) Shall provide the Authority access to and copy of statement of balance in the Escrow Accounts whenever it so requests.

5.4.No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank, be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5.Regulatory Approvals

The Escrow Bank shall use its best efforts to procure, and thereafter maintain and comply with, all regulatory approvals required for it to establish and operate the Escrow Account. The Escrow Bank represents and warrants that it is not aware of any reason why such regulatory approvals will not ordinarily be granted to the Escrow Bank.

6. Escrow Default

6.1.Following events shall constitute an event of default by the Concessionaire (an "Escrow Default") unless such event of default has occurred as a result of Force Majeure or any act or omission of Authority or the Lenders' Representative:

- a) the Concessionaire commits breach of this Agreement by failing to deposit any receipts into the Escrow Account as provided herein and fails to cure such breach by depositing the same into the Escrow Account within a Cure Period of 5 (five) Business Days;
- b) the Concessionaire causes the Escrow Bank to transfer funds to any account of the Concessionaire in breach of the terms of this Agreement and fails to cure such breach by depositing the relevant funds into the Escrow Account or any Sub-Account in which such transfer should have been made, within a Cure Period of 5 (five) Business Days; or
- c) the Concessionaire commits or causes any other breach of the provisions of this Agreement and fails to cure the same within a Cure Period of 5 (five) Business Days.

6.2.Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Concession Agreement. The Escrow Bank shall immediately stop acting in accordance with the instructions of the Concessionaire and shall act only in accordance with the directions of the Authority.

7. Termination of Escrow Agreement

7.1. Duration of Escrow Agreement

This Agreement shall remain in full force and effect so long as any sum remains to be advanced or is outstanding from the Concessionaire in respect of the debt, guarantee or financial assistance received by it from the Lenders, or any of its obligations to Authority remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2. Substitution of Escrow Bank

The Concessionaire may, by not less than 45 (forty five) days prior notice to the Escrow Bank, the Authority and the Lenders' Representative, terminate this Agreement and appoint a new Escrow Bank, provided that the new Escrow Bank is acceptable to the Lenders' Representative and the Authority and arrangements are made satisfactory to the Lenders' Representative and the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect only upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

The Concessionaire shall replace the Escrow Bank if the Authority so requires and in such an event the Concessionaire shall make arrangements for appointment of a new Escrow Bank acceptable to the Lender's Representative and the Authority within 45 (forty five) days from the date of notice by the Authority to replace the Escrow Bank or such other extended date as may be mutually agreed and arrangements shall be made satisfactory to the Lenders' Representative and the Authority for transfer of amounts deposited in the Escrow Account to a new Escrow Account established with the successor Escrow Bank. The termination of this Agreement shall take effect upon coming into force of an Escrow Agreement with the substitute Escrow Bank.

7.3. Closure of Escrow Account

The Escrow Bank shall, at the request of the Concessionaire, Authority and the Lenders' Representative made on or after the payment by the Concessionaire of all outstanding amounts under the Concession Agreement and the Financing Agreements including the payments specified in Article 4.2, and upon confirmation of receipt of such payments, close the Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Concessionaire with the prior approval of the Authority. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated subject to the provisions under Article 11.6 of this Agreement.

8. Supplementary escrow agreement:

The Lenders' Representative and the Concessionaire shall be entitled, with prior notice to and approval of Authority, to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation for withdrawals from Sub-Accounts pursuant to Article 4.1 and for matters not covered under this Agreement such as the rights and obligations of Lenders and lenders of Subordinated Debt, investment of surplus funds, restrictions on withdrawals by the Concessionaire in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal there from, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this

Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9. Indemnity

9.1. General Indemnity

9.1.1. The Concessionaire will indemnify, defend and hold Authority, Escrow Bank and the Lenders, acting through the Lenders' Representative, harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of any breach by the Concessionaire of any of its obligations under this Agreement or on account of failure of the Concessionaire to comply with Applicable Laws and Applicable Permits.

9.1.2. The Escrow Bank will indemnify, defend and hold the Concessionaire and the Authority harmless against any and all proceedings, actions and third party claims for any loss, damage, cost and expense arising out of failure of the Escrow Bank to fulfil its obligations under this Agreement materially and adversely affecting the performance of the Concessionaire's obligations under the Concession Agreement other than any loss, damage, cost and expense, arising out of acts done in discharge of their lawful functions by the Escrow Bank, its officers, servants and agents.

9.2. Notice and contest of claims

9.2.1. In the event that any Party hereto receives a claim from a third party in respect of which it is entitled to the benefit of an indemnity under Article 9.1 or in respect of which it is entitled to reimbursement (the "Indemnified Party"), it shall notify the other Party responsible for indemnifying such claim hereunder (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim, it may conduct the proceedings in the name of the Indemnified Party and shall bear all costs involved in contesting the same. The Indemnified Party shall provide all cooperation and assistance in contesting any claim and shall sign all such writings and documents as the Indemnifying Party may reasonably require.

10. Dispute Resolution

Any Dispute which is not resolved amicably shall be finally decided by reference to arbitration

- (a) the dispute shall be settled under the rules of arbitration of the Arbitration & Conciliation Act, 1996,
- (b) the dispute shall be settled by a sole arbitrator to be appointed as per the provisions of the Arbitration & Conciliation Act, 1996,
- (c) the arbitration shall be held at Kolkata, and Courts at Kolkata shall alone have jurisdiction (to the exclusion of all other Courts) entertain all disputes arising out of the Agreement.

11. Miscellaneous Provisions

11.1. Governing law and jurisdiction

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

11.2. Priority of agreements

In the event of any conflict between the Concession Agreement and this Agreement, the provisions contained in the Concession Agreement shall prevail over this Agreement.

11.3. Alteration of terms

All additions, amendments, modifications and variations to this Agreement shall be effectual and binding only if in writing and signed by the duly authorised representatives of the Parties.

11.4. Waiver

11.4.1. Waiver by any Party of a default by another Party in the observance and performance of any provision of or obligations under this Agreement:

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

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

11.5. No third party beneficiaries

This Agreement is solely for the benefit of the Parties and no other person or entity shall have any rights hereunder.

11.6. Survival

11.6.1. Termination of this Agreement:

- a) shall not relieve the Parties of any obligations hereunder which expressly or by implication survive termination hereof; and
- b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, shall not relieve any Party of any obligations or liabilities for loss or damage to the other Parties 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.

11.6.2. All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of three years following the date of such termination or expiry of this Agreement.

11.7. Severability

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

substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Article 10 of this Escrow Agreement or otherwise.

11.8. Successors and assigns

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

11.9. Notices

All notices or other communications to be given or made under this Agreement shall be in writing and shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile or e-mail. The address for service of each Party, its facsimile number or e-mail are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof, save that where it is received after 5.30 (five thirty) p.m. on a Business Day, or on a day that is not a Business Day, the notice shall be deemed to be received on the first Business Day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile or e-mail shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.10. Language

All notices, certificates, correspondence and proceedings under or in connection with this Agreement shall be in English.

11.11. Authorised representatives

Each of the Parties shall, by notice in writing, designate their respective authorised representatives through whom only all communications shall be made. A Party hereto shall be entitled to remove and/or substitute or make fresh appointment of such authorised representative by similar notice.

11.12. Original Document

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

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

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire at its meeting held on the day of 20..... hereunto affixed in the presence

SIGNED, SEALED AND DELIVERED For and on behalf of LENDERS by the Lenders' Representative:

of, Director, who has signed these presents in token thereof and, Company / Authorised Officer who has countersigned the same in token thereof⁶:

(Signature)

(Name)

Designation)

(Address)

(Fax No.)

(e-mail address)

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED AND DELIVERED by

Representative of Department of Micro, Small & Medium Enterprises & Textiles

For and behalf of

For and behalf of

ESCROW BANK by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the Presence of:

- 1.
- 2.

⁶To be affixed in accordance with the articles of association of the Concessionaire.

20.5 Schedule V: Readiness Certificate

I, (Name of the Project Management Consultant), acting as Project Management Consultant, under and in accordance with the Concession Agreement dated (the "Agreement"), for Development of Apparel Wholesale Hub at Sector V, Salt Lake, through Public Private Partnership (the "Project"), through (Name of Concessionaire), hereby certify that the tests have been successfully undertaken to determine compliance of the Project Facilities with the provisions of the Agreement, and I am satisfied that the Project Facilities can be safely and reliably placed in commercial service of the end users/allottees thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facilities have been completed, and the Project Facility is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the PROJECT MANAGEMENT
CONSULTANT by:

(Signature)

(Name)

(Designation)

(Address)

20.6 Schedule VI: Vesting Certificate

The Governor of West Bengal represented by the Department of Micro, Small & Medium Enterprises & Textiles (“**Authority**”) refers to the Concession Agreement dated (the “**Agreement**”) and the Lease Deed datedentered into between the Authority and (the “**Concessionaire**”) for Development of Apparel Wholesale Hub at Sector V, Salt Lake, West Bengal through Public Private Partnership (PPP) (the “**Project**”).

Authority hereby acknowledges compliance and fulfillment by the Concessionaire of the handover requirements set forth in Article 16 of the Concession Agreement on the basis that upon issue of this Vesting Certificate, Authority shall be deemed to have acquired, and all title and interest of the Concessionaire in or about the Project shall be deemed to have vested unto Authority, free from any Encumbrances, charges and liens whatsoever.

Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Concessionaire to rectify and remedy any defect or deficiency in any of the handover requirements and/or relieving the Concessionaire in any manner of the same.

Signed this day of, 20..... at _____.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED by

_____, Department of Micro, Small & Medium Enterprises & Textiles

For and behalf of

For and behalf of

CONCESSIONAIRE by:

Department of Micro, Small & Medium Enterprises & Textiles by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the Presence of:

1.

2.

20.7 Schedule VII: Terms of Reference of the Project Management Consultant

1. Scope

- 1.1. The Terms of Reference for the Project Management Consultant (the "**TOR**") are, being specified pursuant to the Concession Agreement (the "**Agreement**"), whereby the Concessionaire has been granted Development Rights for setting up of a Apparel Wholesale Hub at Sector V, Salt Lake, West Bengal, West Bengal (the "**Project**").
- 1.2. This TOR shall apply to construction of the Project Facility. Whereas the TOR details out the scope of the Project Management Consultant, it is hereby clarified that the Concession Agreement shall govern the scope of the Project Management Consultant. In the event of any deviation in the scope of the Project Management Consultant in the TOR and the Concession Agreement, the scope of the Project Management Consultant as per the Concession Agreement shall be considered.

2. Definitions and Interpretations

- 2.1. The words and expressions beginning with or in capital letters used in this TOR and not defined herein but defined in the Concession Agreement shall have, unless repugnant to the context, the meaning respectively assigned to them in the Agreement.
- 2.2. References to Articles, Artides and Schedules in this TOR shall, except where the context otherwise requires, be deemed to be references to the Articles, Artides and Schedules of the Agreement, and references to Paragraphs shall be deemed to be references to Paragraphs of this TOR.
- 2.3. The rules of interpretation stated in Articles 1.2, 1.3 and 1.4 of the Concession Agreement shall apply, mutatis mutandis, to this TOR

3. Role and functions of the Project Management Consultant

- 3.1. The role and functions of the Project Management Consultant shall include the following:
 - a. review and approval of the Detailed Project Report (DPR), Drawings and Documents as set forth in Paragraph 4 of this TOR;
 - b. review, inspection and monitoring of Construction Works as set forth in Paragraph 5;
 - c. conducting Tests on completion of construction and issuing Readiness Certificate as set forth in Paragraph 5;
 - d. determining, as required under the Agreement, the costs of any works or services and/or their reasonableness;
 - e. determining, as required under the Agreement, the period or any extension thereof, for performing any duty or obligation;
 - f. assisting the Parties in resolution of disputes as set forth in Paragraph 8; and
 - g. undertaking all other duties and functions in accordance with the Agreement.
- 3.2. The Project Management Consultant shall discharge its duties in a fair, impartial and efficient manner, consistent with the highest standards of professional integrity and Good Industry Practice.

4. Pre-Construction Stage

- 4.1. During the pre-construction stage (before the Construction Commencement Certificate), the Project Management Consultant shall undertake a detailed review of the DPR and Drawings to be furnished by the Concessionaire along with supporting data, including the geo-technical and hydrological investigations; characteristics of materials from borrough areas and quarry sites, topographical, surveys and traffic surveys. The Project Management Consultant shall complete such review and send its comments/observations to Authority and the Concessionaire within 15 (fifteen) days of receipt of such DPR and Drawings. In particular, such comments shall specify the conformity or otherwise of such DPR and drawings with the scope of the Project and Specifications and Standards.
 - 4.2. The Project Management Consultant shall review the DPR/drawings/documents and suggest any modification that are required to be undertaken by the Concessionaire and furnish its comments within 15 (fifteen) days of receiving such revised DPR or Drawings or Documents. The Project Management Consultant shall also communicate its approval or otherwise of the revised DPR or Drawings or Documents.
 - 4.3. The Project Management Consultant shall review the detailed design, construction methodology, quality assurance procedures and the procurement, engineering and construction time schedule sent to it by the Concessionaire and furnish its comments within 15 (fifteen) days of receipt thereof. The Project Management Consultant shall communicate its approval or otherwise for the revised submissions made by the Concessionaire.
 - 4.4. Upon reference by Authority, Project Management Consultant shall review and comment on the Engineering Procurement and Construction Contract or any other contract for construction of the Project Facilities, and furnish its comments within 15 (fifteen) days from receipt of such reference from Authority.
5. Construction stage
- 5.1. In respect of the Drawings and Documents received by the Project Management Consultant for its review and comments during the Construction Period, the provisions of Paragraph 4 shall apply, *mutatis mutandis*.
 - 5.2. The Project Management Consultant shall review the monthly progress report furnished by the Concessionaire and send its comments thereon to the Authority and the Concessionaire within 7 (seven) days of receipt of such report.
 - 5.3. The Project Management Consultant shall inspect the Construction Works and the Project Facilities once every month, preferably after receipt of the monthly progress report from the Concessionaire, but before the 20th (twentieth) day of each month in any case, and make out a report of such Inspection (the "Inspection Report") setting forth an overview of the status, progress, quality and safety of construction; including the work methodology adopted, the materials used and their sources, and conformity of Construction Works with the Scope of Work and the specifications and standards. In a separate section of the Inspection Report, the Project Management Consultant shall describe in reasonable detail the lapses, defects or deficiencies observed by it in the construction of the Project Facilities. The Project Management Consultant shall send a copy of its Inspection Report to the Authority and the Concessionaire within 7 (seven) days of the inspection.
 - 5.4. The Project Management Consultant may inspect the Project Facilities more than once in a month if any lapses, defects or deficiencies require such inspections.

- 5.5. For determining that the Construction Works conform to Specifications and Standards, the Project Management Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests on a sample basis, to be specified by the Project Management Consultant in accordance with Good Industry Practice for quality assurance. The Project Management Consultant shall issue necessary directions to the Concessionaire for ensuring that the tests are conducted in a fair and efficient manner, and shall monitor and review the results thereof.
- 5.6. The sample size of the tests, to be specified by the Project Management Consultant under Paragraph 5.5, shall comprise 10% (ten per cent) of the quantity or number of tests prescribed for each category or type of tests in the Quality Control Manuals; provided that the Project Management Consultant may, for reasons to be recorded in writing, increase the aforesaid sample size by up to 10% (ten per cent) for certain categories or types of tests.
- 5.7. The timing of tests referred to in Paragraph 5.5, and the criteria for acceptance rejection of their results shall be determined by the Project Management Consultant in accordance with the Quality Control Manuals. The tests shall be undertaken on a random sample basis and shall be in addition to, and independent of, the test that may be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice.
- 5.8. In the event that the Concessionaire carries out any remedial works for removal or rectification of any defects or deficiencies, the Project Management Consultant shall require the Concessionaire to carry out, or cause to be carried out, tests to determine that such remedial works have brought the Construction Works into conformity with the Specifications and Standards, and the provisions of this Paragraph 5 shall apply to such tests.
- 5.9. In the event that the Concessionaire fails to achieve any of the Project Milestones, the Project Management Consultant shall undertake a review of the progress of construction and identify potential delays, if any. If the Project Management Consultant shall determine that completion of the Project Facilities is not feasible within the time specified in the Agreement, it shall require the Concessionaire to indicate within 15 (fifteen) days the steps proposed to be taken to expedite progress, and the period within which the Scheduled Completion Date shall be achieved. Upon receipt of a report from the Concessionaire, the Project Management Consultant shall review the same and send its comments to Authority and the Concessionaire forthwith.
- 5.10. If at any time during the Construction Period, the Project Management Consultant determines that the Concessionaire has not made adequate arrangements for the safety of workers and Users in the zone of construction or that any work is being carried out in a manner that threatens the safety of the workers and the Users in the shall make a recommendation to Authority forthwith, identifying the whole or part of the Construction Works that should be suspended for ensuring safety in respect thereof.
- 5.11. In the event that the Concessionaire carries out any remedial measures to secure the safety of suspended works and users, it may, by notice in writing, 'require the Project Management Consultant to inspect such works, and within 3 (three) days of receiving such notice, the Project Management Consultant shall inspect the suspended works and make a report to Authority forthwith, recommending whether or not such suspension may be revoked by Authority.

- 5.12. If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Project Management Consultant shall determine the extension of dates set forth in the completion schedule, to which the Concessionaire is reasonably entitled, and shall notify Authority and the Concessionaire of the same.
 - 5.13. The Project Management Consultant shall carry out, or cause to be carried out; all the Tests specified and issue a Readiness Certificate or Provisional Readiness Certificate, as the case may be. For carrying out its functions under this Paragraph 5.13 and all matters incidental thereto, the Project Management Consultant shall act under and in accordance with the provisions of the Concession Agreement.
 - 5.14. Upon reference from Authority, the Project Management Consultant shall make a fair and reasonable assessment of the costs of providing information, works and services as set forth in Article 6 and certify the reasonableness of such costs for payment by Authority to the Concessionaire.
6. Termination
 - 6.1. At any time; not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Project Management Consultant shall, in the presence of a representative of the Concessionaire, inspect the Project Facilities before issuance of the Vesting Certificate as set out in Article 16.3 of the Concession Agreement and, if required, cause tests to be carried out at the Concessionaire's cost. If the Project Management Consultant determines that the status of the Project Facilities is such that substantial repair and rectification would be required, the Project Management Consultant shall notify Authority accordingly.
 - 6.2. The Project Management Consultant shall inspect the Project Facilities once in every 15 (fifteen) days during a period of 90 (ninety) days after Termination for determining the liability of the Concessionaire, in respect of the defects or deficiencies specified therein. If any such defect or deficiency is found by the Project Management Consultant, it shall make a report in reasonable detail and send it forthwith to Authority and the Concessionaire.
7. Determination of costs and time
 - 7.1. The Project Management Consultant shall determine the costs, and/or their reasonableness that are required to be determined by it under the Agreement.
 - 7.2. The Project Management Consultant shall determine the period, or any extension thereof that is required to be determined by it under the Agreement.
8. Assistance in Dispute resolution
 - 8.1. In the event of any disagreement between the Parties regarding the meaning, scope and nature of Good Industry Practice, as set forth in any provision of the Agreement, the Project Management Consultant shall specify such meaning, scope and nature by issuing a reasoned written statement relying on good industry practice and authentic literature.
9. Other duties and function
 - 9.1. The Project Management Consultant shall perform all other duties and functions specified in the Agreement.
10. Miscellaneous

- 10.1. The Project Management Consultant shall notify its programme of inspection to Authority and to the Concessionaire, who may, in their discretion, depute their respective representatives to be present during the inspection
- 10.2. A copy of all communications, comments, and instructions, drawings or documents sent by the Project Management Consultant to the Concessionaire pursuant to this TOR, and a copy of all the test results with comments of the Project Management Consultant thereon shall be furnished by the Project Management Consultant to Authority forthwith.
- 10.3. The Project Management Consultant shall obtain and the Concessionaire shall furnish in two copies thereof, all communications and reports required to be submitted, under this Agreement, by the Concessionaire to the Project Management Consultant, whereupon the Project Management Consultant shall send one of the copies to Authority along with its comments thereon.
- 10.4. The Project Management Consultant shall retain at least one copy each of all drawings and documents received by it, including 'as-built' drawings, and keep them in its safe custody.

Upon completion of its assignment hereunder, the Project Management Consultant shall duly classify and list all drawings, documents, results of tests and other relevant records, and hand them over to Authority or such other person as Authority may specify, and obtain written receipt thereof two copies of the said document shall also be furnished in micro film form or in such other medium as may be acceptable to Authority.

11. Performance Article

- 11.1. Project Management Consultants shall be expected to fully comply with all the provisions of the Terms of Reference, and shall be fully responsible for supervising the Designs, Construction and maintenance and operation of the Project Facility takes place in accordance with the provisions of the Concession Agreement and other schedules. Any failure of the Project Management Consultant in notifying to Authority and the Concessionaire on non-compliance of the provisions of the Concession Agreement and other schedules by the Concessionaire, non-adherence to the provision of TOR and non-adherence to the time schedule prescribed under TOR shall amount to non- performance.
- 11.2. The Project Management Consultant shall appoint its authorized representative, who shall issue on behalf of the Project Management Consultant, the Provisional Readiness Certificate and Readiness Certificate along with the Team Leader and shall carry out any such task as may be decided by the Authority. The Project Management Consultant shall take the prior approval of the Authority before issuing Provisional Readiness Certificate and Readiness Certificate. The proposal submitted shall also include the name of the authorized representative along with the authorization letter and power of attorney.

12. Period of Service

1. The services of the Project Management Consultant would be availed for an initial period of 60 (sixty) months. This appointment would be valid for a period of 60 (sixty) months from the date of issue of LOA to the Project Management Consultant.

20.8 Schedule VIII: Annual Lease Rent and Occupational Charge

20.8.1 The Project Site will be given on lease to the Concessionaire being the nominee of the Selected Bidder by the Authority. In consideration of the Authority providing the designated plot of land on concession for the Project, the Concessionaire is required to pay **Annual Lease Rent** to the Authority each year till the end of Concession Period, after the execution of the Lease Deed. From execution of the Concession Agreement till execution of the Lease Deed, the Concessionaire shall make payment of an Occupational Charge in respect of the Project Site.

Annual Lease Rent = Rs. 5 per square meter on the built-up area to be retained by the Concessionaire i.e. [●], to be paid to the Authority in such account as may be specified by the Authority

Occupational Charge shall be calculated as follows:

Occupational Charge (per month or part thereof as applicable) = **annual lease rent/ 12 to be paid to the Authority in such account as may be specified by the Department**

- i. The Concessionaire shall pay to the Authority the Occupational Charges within 15 (Fifteen) days of each month from the execution of the Concession Agreement, till the execution of the Lease Deed.

The Concessionaire shall pay to the Authority after the execution of Lease Deed the Annual Lease Rent within 15 (Fifteen) days of the first month of each Concession Year (As defined in the Concession Agreement). However, the first Annual Lease Rent shall be paid within 15 days of execution of Lease Deed and shall be calculated from the date of execution of Lease Deed to the end of Concession Year on pro rata basis. For example, if Concession Agreement is executed on 15th March 2016, and Lease Deed is executed on 15th October 2015, then the first Annual Lease Rent shall be paid latest by 30th October 2015 and shall be calculated from 15th October 2015 to 14th March 2017 on pro rata basis, second Annual Lease Rent shall be paid latest by 30th January 2017, third Annual Lease Rent shall be paid latest by 30th January 2018 and so on till the end of the Concession Period.

20.9 Schedule IX: Provisional Readiness Certificate

I, (Name of the Project Management Consultant), acting as Project Management Consultant, under and in accordance with the Concession Agreement dated (the “**Agreement**”), for the Development of a Apparel Wholesale Hub at Sector V, Salt Lake, West Bengal through Public Private Partnership (the “**Project**”), through (Name of Concessionaire), hereby certify that the tests have been successfully undertaken to determine compliance of the Project Facilities, to the tune of a minimum of _____ square feet, with the provisions of the Agreement, and I am satisfied that the Project Facilities, to the extent of _____ square feet, can be safely and reliably placed in commercial service of the users thereof.

It is certified that, in terms of the aforesaid Agreement, all works forming part of the Project Facilities have been completed, and the Project Facility is hereby declared fit for entry into commercial operation on this the day of 20.....

SIGNED, SEALED AND DELIVERED

For and on behalf of the PROJECT MANAGEMENT
CONSULTANT by:

(Signature)

(Name)

(Designation)

(Address)

20.10 Schedule X: Lease Deed

(DISCLAIMER: This draft lease deed shall be subject to change during the actual execution of the same considering the prevailing conditions during such execution. The conditions shall be modified to ensure strict compliance with the DPR approved by the Authority which was submitted by the Concessionaire under the provisions of the Concession Agreement)

THIS DEED OF LEASE made this [•] day of [•] (hereinafter referred to as the “**date of commencement of lease**”), Two Thousand and Sixteen **BETWEEN GOVERNOR OF WEST BENGAL**, represented by the ___ Secretary, Department of Micro, Small & Medium Enterprises & Textiles, hereinafter referred to as the “**LESSOR**” of the **ONE PART AND [•]**, a company/limited liability partnership incorporated under the Companies Act, 2013/Limited Liability Partnership Act, 2008 having its registered office/ offices at [•], hereinafter referred to as the “**LESSEE**” (which expression shall unless it be repugnant to the context or meaning thereof mean and include its successor or successors-in-office and/or permitted assigns) of the **OTHER PART**:

WHEREAS:

- A. The Lessor is seized and possessed of and/or otherwise well and sufficiently entitled to as the Owner of **ALL THAT** piece and parcel of land containing an area of 3.78 acres, more or less, situate, lying at and being at Dag Nos. [•], [•] and [•], Khatian No. - [•], in Mouza No. [•] within P.S. [•] and Gram panchayat [•], fully described in the **SCHEDULE** hereunder written and hereinafter referred to as the “**said premises**”.
- B. Bids were invited by the Lessor whereby the Selected Bidder upon being declared as the highest bidder, had incorporated the Lessee and the Lessor having agreed to grant to the Lessee upon the performance and observance by the Lessee of the obligations and conditions contained in the agreement dated [•] executed between the Lessor and the Lessee (“**Concession Agreement**”), lease of the said premises and the structures constructed by the Lessee on the said premises pursuant to the Concession so granted, for the balance Concession Period.
- C. The Lessor has now agreed to grant to the Lessee, a lease of the said premises for the balance Concession Period (being ___ years ___ months) from the date of execution hereof and on the terms and conditions as hereinafter contained.

NOW THIS DEED OF LEASE WITNESSETH as follows:

I. In consideration of the rent hereby reserved (as provided herein after) and of the terms, conditions and covenants hereinafter contained and on the part of the Lessee to be paid observed, performed and fulfilled, the Lessor doth hereby initially grant a lease unto the Lessee of **ALL THAT** piece and parcel of land containing by measurement an area of 3.78 acres more or less, at Dag Nos. [•],[•], and [•], Khatian No. - [•], in Mouza - [•], within P.S. [•] and Gram Panchayat [•], fully described in the **SCHEDULE** hereunder written and delineated in the map or plan hereto annexed and thereon bordered red **TOGETHER WITH** the existing structure made thereupon on the said premises and hereinafter collectively referred to as the “**demised area**”, **TO HAVE AND TO HOLD** the same unto the Lessee for a period of ___ (___) years ___ (___) months commencing from the **date of execution of the lease YIELDING AND PAYING THEREFORE** unto the Lessor during the said term an Annual Lease Rent calculated at the rate of Rs. [•] /- (Rupees [•] only) per annum from the date of execution of this deed (hereinafter referred to as the “annual lease rent”) without any deduction or abatement whatsoever on or before the 15th day of the first month of each Concession Year for which the same is paid. The Lessor acknowledges receipt of the annual lease rent (on or before execution of these presents) for the lease period commencing from the date of execution of these presents and ending on the last day of the First Concession Year.

II. AND THE LESSEE DOTH HEREBY COVENANT WITH THE LESSOR as follows:

- 2.1 To regularly and punctually pay the annual lease rent herein reserved to the Lessor on the days and in the manner herein mentioned without any deduction or abatement whatsoever on and from the date of execution of the Lease Deed.
- 2.2 To apply for and cause municipal / panchayat apportionment of tax and for separate assessment of the demised area and separate mutation also in its name to which the Lessor has no objection. Provided however that the Lessee shall not be entitled to exercise the rights contemplated herein in respect of the Authority's Allocation Land.
- 2.3 To pay and discharge all existing and future municipal/ panchayat rates, taxes, revenues assessments, impositions and outgoings (including interest and penalties in case of delayed payment) whatsoever which now are or during the said term shall be imposed or charged upon the demise of the demised area and which may be payable by the owner or occupier thereof in respect of the demised area.
- 2.4 To comply with and follow all applicable laws, rules and regulations for construction, use enjoyment and possession of the demised area erected / constructed at the said premises [including but not limited to the Land Use Development and Control Plan ("LUDCP") and/or also the Building Rules thereof or of the concerned Municipality/ Panchayat / local bodies and to be solely answerable and responsible for all breaches and/or defaults in compliance thereof and to keep the Lessor saved harmless and indemnified for all losses claims and demands which the Lessor may suffer or be put to by reason of any breach or alleged breach of this covenant. To construct strictly in accordance with the DPR and the provisions of the Concession Agreement.
- 2.5 To obtain at its own cost all permissions and licences which may be necessary to hold use and/or enjoy the demised area and observe and perform all laws, rules and regulations which may be required to be observed and performed by it, at its own costs and responsibility, keeping the Lessor saved harmless and indemnified in this regard.
- 2.6 To keep the demised area and every part thereof in a neat and dean manner and hygienic condition free from all sorts of nuisance and not to allow accumulation of any water, waste, dirt or garbage in any part thereof which is or can be a risk to the health of the occupants of the demised area and the said premises or of the nearby properties at any time.
- 2.7 To maintain and keep all parts and structures of the demised area in good and habitable condition at all material times.
- 2.8 To make all arrangements for security, firefighting and fire safety and all necessary civic facilities and amenities as may be required for preservation and protection of the demised area at its own cost and to the satisfaction of the Lessor and to carry out regular maintenance and replacement of electrical wirings, installations and appliances thereat and to keep the Lessor saved harmless and indemnified for all consequences of breach or non-observation of fire safety norms.
- 2.9 To allow the Lessor, its agents and servants with 24 (twenty four) hours' previous notice in writing (except for emergencies when no such notice would be required) to enter into and upon the demised area and all structures thereon and view the state and condition thereof and to give or leave notice of any defect in such condition which the Lessee shall be liable to make good within 15 (fifteen) days after such notice has been given or left.
- 2.10 To make regular payments for consumption of electricity, water and other services and/or utilities supplied to or obtained for the demised area and to keep the Lessor saved harmless and indemnified in this regard. In the event there are any amounts outstanding with respect to water

and electricity or any other utilities or facilities or services consumed or availed for the demised area on the expiry or sooner determination of this Lease Deed, the Lessee shall be liable to make payments for the same to the concerned authority notwithstanding the expiry or determination of this lease.

- 2.11 To execute to the satisfaction of the Lessor all works and observe and perform all such rules and conditions which shall appear to the Lessor or to the appropriate authorities of the State to be necessary or desirable in order to keep the demised area in good sanitary order and condition.
- 2.12 To take steps to ensure that no third party may encroach into or upon any portion of the demised area.
- 2.13 To allow any person authorised by the Lessor to inspect, repair and clean sewer lines or to do any other works in connection therewith, within the demised area without any obstruction or hindrance by the Lessee or by any of its men and agents.
- 2.14 Not to use any means of access to the demised area except the delineated path and passages for access to the demised area.
- 2.15 Not to claim any right of partition by metes and bounds of the undivided proportionate share or interest of the land.
- 2.16 Not to demolish any existing structures on the land without the prior written concurrence of the Lessor
- 2.17 Not to use or allow the demised area or any part thereof to be used for any illegal or immoral purposes or for any noisy or offensive trade or business.
- 2.18 Not to bring in or store or allow to be brought in or stored in the demised area or any part thereof any hazardous inflammable combustible explosive or exceptionally heavy substance article or any hide, skin or other articles likely to injure or damage the structures belonging to the Lessor and/or the demised area and/or part thereof and not do or allow to be done on the demised area anything that may deteriorate the value of the demised area or injure the same in any way, except in accordance with law.
- 2.19 Not to allow the demised area or any construction thereon or any part thereof to be used as a place of public worship and not allow any shrine, temple, mosque, church or any other kind of place of worship to be erected thereon or on any part thereof for the said purposes.
- 2.20 Not to assign and/or transfer its right or interest in the demised area or any part thereof (except by way of sub-lease, sub-letting or any other mode or manner not amounting to a complete assignment of Lessee's right title and interest in the demised area or any part thereof as described hereinafter in clause 3.2 or on terms not inconsistent with or contrary to the terms hereof) without previous concurrence in writing of the Lessor. A transfer or assignment which is restricted hereby shall also include transfer or assignment by way of amalgamation, reconstruction or any other mode or manner by which the leasehold interest of the Lessee is whether due to its voluntary or an involuntary act, transferred to any other person, without the concurrence in writing of the Lessor and such transfers shall require the necessary prior approval in writing of the Lessor and payment of applicable charges, provided that the Lessee shall have the right to mortgage or charge its leasehold interest in the demised area (not the demised land itself) with the prior permission of the Lessor in favour of Scheduled Banks as provided for in the Concession Agreement without foisting any liability on the Lessor. It is however clarified that the Lessee shall not be entitled to sub-lease, sub-let, mortgage, encumber or deal in any manner

whatsoever the Authority's Allocation and the Authority's Allocation Land including any leasehold interest over the Authority's Allocation Land.

- 2.21 Not to encroach or allow or suffer any encroachment to be made upon the adjoining roads or any portions of lands surrounding the demised area or upon any other adjoining land whatsoever.
- 2.22 Not to claim any damage or compensation for delay in providing any infrastructural facility such as sewerage connection, water supply, electricity connection for the demised area or for any other similar cause or nature.
- 2.23 Not to do or cause to be done in or upon the demised area or any part thereof any act or thing which shall or may be or become a nuisance, damage, annoyance, inconvenience or danger to the demised area or to the owners or occupiers of any adjoining or neighbouring land or premises.
- 2.24 At the expiry of the term hereby granted or sooner determination thereof, the Lessee shall make over vacant and peaceful possession of the demised area to the Lessor together with all constructions erected thereon, free from all encumbrances, charges, mortgages and in accordance with the Concession Agreement. That if the Lessee on the Termination Date or date of expiry of the Concession Agreement whichever is earlier, does not handover peaceful and vacant possession of the demised area to the Lessor, the Lessor shall be entitled to mesne profit computed at the rate of the average daily profits earned by the Concessionaire during the 3 (three) years immediately preceding the date of eviction of the Concessionaire or a sum of Rs. _____ per day, whichever is higher without prejudice to its other rights and remedies available under Applicable Law.
- 2.25 The land shall be used and developed strictly as per the terms and conditions of the Concession Agreement.
- 2.26 Upon hand over of possession of the Authority's Allocation, the leasehold interest of the Lessee in respect of the Authority's Allocation Land shall be deemed to have determined. The Lessee covenants to execute such documents as may be necessary in this regard.

III. THE LESSOR HEREBY COVENANTS WITH THE LESSEE as follows:

- 3.1 The Lessee, paying the annual lease rent, the said rates and taxes, and other amounts hereby reserved and observing and performing the terms conditions and covenants herein contained and on its part to be paid performed and observed, shall hold and enjoy the demised area during the term hereby created without any interruption, hindrance, disturbance or obstruction by the Lessor or any person claiming through under or in trust for the Lessor.
- 3.2 The Lessee shall be entitled to sub-let, sub-lease or otherwise deal with or dispose of the demised area and/or part thereof not amounting to any assignment of Lessee's interest in the demised area, save and except the Authority's Allocation Land or the Authority's Allocation or any part thereof on terms and conditions not contrary to or inconsistent with the terms of these presents and the Concession Agreement. Provided However that the Lessee shall always keep the Lessor saved harmless and indemnified from and against any losses claims or demands which the Lessor may suffer or be put to by reason of any such sub-letting or use PROVIDED HOWEVER that such act of sub-letting or sub-lease has to be carried out with the previous concurrence of the Authority in the manner postulated in the Concession Agreement.

IV. THE LESSOR AND THE LESSEE HEREBY AGREE AND COVENANT WITH EACH OTHER as follows:

- 4.1 That any demand for payment or notice requiring to be made upon or given to the Lessee shall be sufficiently made or given if sent by the Lessor to the Lessee at the address of the demised area or sent by registered post / speed post addressed to the Lessee at the demised area or to its last known address and that, the notice requiring to be given to the Lessor shall be sufficiently given if delivered at or sent by registered post / speed post addressed to the office of the Lessee. All changes of address of the Lessee shall be communicated by the Lessee to the ____ Secretary of the Lessor in writing within a reasonable period of its change.
- 4.2 That any relaxation and indulgence granted by the Lessor to the Lessee shall not in any way prejudice the rights of the Lessor under this Lease Deed.
- 4.3 That the failure of the Lessor to enforce in any one or more instances, performance of any of the terms covenants and conditions of these presents shall not be construed as a waiver or relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term condition and covenant and such failure shall not in any way affect the validity of this Lease Deed or the rights and obligations of the parties hereto. The Lessee agrees that a waiver of any term or provision hereof may only be made by a written instrument of modification of lease executed by both parties hereto.
- 4.4 That any statutory powers as may have been or will be conferred upon the Lessor shall automatically apply to the present lease and the demised area, save and except the Authority's Allocation Land and provisions in that respect shall be deemed to have been incorporated in these presents by way of reference and the Lessee is deemed to have constructive notice thereof.
- 4.5 That the terms and conditions of the lease shall be subject to changes of policy of the Lessor from time to time and the Lessee shall abide by the same.
- 4.6 If the Lessee shall commit an act of insolvency or be adjudicated bankrupt or insolvent or enter into a composition or arrangement with its creditors or if the Lessee being a company or corporate body shall go into liquidation or be wound up whether compulsorily or voluntarily (including for the purpose of amalgamation or re-construction) or suffer any execution proceedings to be levied or a receiver to be appointed in respect of any of their properties and effects or notwithstanding anything in these presents contained, if the Lessee is in breach of any of the terms, conditions and covenants contained in these presents and on its part to be paid observed or performed and the Lessor calling upon the Lessee to rectify the breach complained of and such breach not being cured or rectified to the Lessor's satisfaction within the period prescribed in the Concession Agreement from the date of service of such notice, then and in any of such cases, it shall be lawful for the Lessor or any person duly authorised by it without any further notice at any time thereafter to treat this demise as determined and to re-enter into and upon the demised area or any part thereof and the same to have again re-possessed and enjoyed as in its former estate and without being liable to pay any cost or compensation for the demised area which shall vest in the Lessor on such termination and notice of resumption, but without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach or non-performance or non-observance of any of the covenants and conditions by the Lessee herein contained.
- 4.7 That if it is found that the lease of the demised area has been obtained by the Lessee by misrepresentation or fraud, the lease shall stand determined and the Lessor entitled to its rights contained in clause 4.6 above.

- 4.8 That in the event the Concession Agreement dated ____ is terminated on any account in terms of the Concession Agreement, the present Lease Deed shall automatically be determined and the Lessor shall be entitled to its rights contained in clause 4.6 above.
- 4.9 That in the event of the demised area or any part thereof being materially damaged or destroyed by earthquake tempest or other act of God or any irresistible force or fire not caused by any act or neglect on the part of the Lessee so as to render the demised area or any part thereof substantially and permanently unfit for the purpose for which it has been let, this lease /sub-lease shall at the option of the Lessee be void.
- 4.10 The Lessor shall also be entitled to the rights available to it under the Concession Agreement and this Lease Deed shall also be governed by the provisions of the Concession Agreement to the extent applicable to the lease contemplated herein.
- 4.11 That in case of any dispute in the interpretation of any of the clauses of the terms and conditions contained in this Lease Deed, the decision of the Lessor shall be final and binding. Capitalised words not defined herein shall have the meaning ascribed to them in the Concession Agreement.
- 4.12 That both the Lessor and the Lessee expressly agree for registration of these presents. The cost of preparing, stamping and registering this Lease Deed shall be borne by the Lessee.
- 4.13 Courts at Kolkata alone shall have exclusive jurisdiction to try and entertain all disputes arising out of this Lease Deed and the transactions contemplated herein.

THE SCHEDULE ABOVE REFERRED TO:

(Description of the demised area)

ALL THAT piece and parcel of land admeasuring 39 acres more or less, in Dag Nos. [•],[•] and [•], Khatian No. - [•], in Mouza - [•], within P.S. [•] and Gram Panchayat [•], and delineated in the building plan annexed hereto and bordered red thereon and butted and bounded as follows, this is to say:

On the **NORTH** : By [•];

On the **EAST** : By [•];

On the **SOUTH** : By [•]; and

On the **WEST** : By [•].

IN WITNESS WHEREOF the parties to these presents have hereto set and subscribed their respective hands on the day, month and year first above written.

SIGNED AND DELIVERED for and on behalf of the **LESSOR** by Mr. [•], [•], Government of West Bengal, duly authorized by the Lessor in this regard at **Kolkata** in the presence of:

SIGNED AND DELIVERED for and on behalf of the **LESSEE** by Mr. [•], its [•], pursuant to a resolution of its Board of Directors passed at its meeting held on [•] at **Kolkata** in the presence of:

DATED THIS DAY OF 2016

BETWEEN

GOVERNOR OF WEST BENGAL

... Lessor

AND

[•]

... Lessee

LEASE DEED