

MAHARASHTRA METRO RAIL CORPORATION LTD.

(NAGPUR METRO RAIL PROJECT)

Volume II - Draft License Agreement

For

Licensing of Built-up Spaces at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jaiprakash Nagar Metro Station of Nagpur Metro Rail Project for a period of 30 Years.

Tender No: N1PD-08/2019



January, 2019

MAHARASHTRA METRO RAIL CORPORATION LTD.

**Metro House, 28/2 Anand Nagar, C K Naidu Road,
Civil Lines, Nagpur-440001**

Website: <http://www.metrorailnagpur.com>

Contents

PART I- PRELIMINARY	4
ARTICLE 1 DEFINITIONS AND INTERPRETATION	8
1.1. Definitions	8
1.2. Interpretation.....	11
1.3. Measurements and arithmetic conventions	13
1.4. Priority of agreements, clauses and schedules	13
ARTICLE 2 SCOPE OF WORK	14
2.1. General Terms and Conditions.....	14
2.2. Scope of Work	14
2.3. Handing over of tendered space	16
2.4. Works to be executed	17
2.5. Property Tax and Registration of License Agreement	18
2.6. Infrastructure Services	19
2.7. Signages and Advertisements	22
2.8. Extension of Date of Commencement / Moratorium Period / License Period	23
2.9. Grace Period.....	23
2.10. Other Conditions	24
ARTICLE 3 GRANT OF LICENSE.....	25
3.1. The License.....	25
3.2. Grant subject to obligation	26
3.3. Lease Period	26
3.4. Restriction on sub-leasing/sub-licensing the use of the Licensed Area or any part thereof	27
ARTICLE 4 TOTAL CONSIDERATION TO MAHA-METRO	28
4.1. Charging of Total Consideration.....	28
4.2. Taxes and Penalties.....	31
4.3. Charges for Electricity and Water	31
ARTICLE 5 OBLIGATIONS OF THE LICENSEE	32
5.1. Obligations of the Licensee	32
5.2. Employment of trained personnel	33
5.3. Authorised Representative and Project Manager	34
5.4. Obligation with respect to Taxes, duties.....	34
5.5. Approvals & Licences for the Project	34
ARTICLE 6 OBLIGATIONS OF THE AUTHORITY	36
6.1. Obligations of the Authority.....	36

ARTICLE 7 REPRESENTATIONS AND WARRANTIES	37
7.1. Representations and warranties of the Licensee.....	37
7.2. Representations and warranties of the Authority	38
7.3. Disclosure	38
ARTICLE 8 DISCLAIMER.....	39
8.1. Disclaimer.....	39
ARTICLE 9 SECURITY DEPOSIT	40
9.1. Security Deposit	40
9.2. Appropriation of Security Deposit	41
9.3. Release of Security Deposit.....	41
ARTICLE 10 ENTRY TO COMMERCIAL SERVICE	42
10.1. Effective Date	42
10.2. Commercial Operation Date (COD).....	42
10.3. Fitment period	42
10.4. Moratorium Period	42
ARTICLE 11 OPERATION AND MAINTENANCE.....	43
11.1. O&M obligations of the Licensee.....	43
11.2. Maintenance Requirements.....	45
11.3. Safety, breakdowns and accidents.....	45
11.4. De-commissioning due to Emergency.....	45
11.5. Authority's right to take remedial measures	45
11.6. Overriding powers of the Authority	46
11.7. Restoration of loss or damage to Licensed premises	46
ARTICLE 12 INDEMNITY AND INSURANCE	48
12.1. Insurance.....	48
12.2. Indemnity	48
ARTICLE 13 MONITORING OF OPERATION AND MAINTENANCE.....	50
13.1. Reports of unusual occurrence	50
ARTICLE 14 FORCE MAJEURE	51
14.1. Force Majeure	51
14.2. Notice of Force Majeure Event	51
14.3. Performance of Obligations	52
14.4. Termination due to a Force Majeure Event.....	52
ARTICLE 15 BREACHES/SURRENDER/TERMINATION OF LICENSE AGREEMENT.....	53
15.1. Surrender of License Agreement:	53
15.2. Breach of License Agreement/ Licensee's Events of Default:.....	54

15.3. Termination of License Agreement by Maha-Metro:	55
15.4. On Operational Ground:	55
15.5. Termination for Force Majeure:.....	56
15.6. Other Terms & Conditions:	56
15.7. Rights of Maha-Metro on Termination	57
15.8. Right to re-market the said Licensed Space(s) on Termination	57
ARTICLE 16 DISPUTE RESOLUTION/ARBITRATION.....	58
16.1. Amicable Resolution	58
16.2. Arbitration	60
ARTICLE 17 REPRESENTATIONS AND WARRANTIES	65
17.1. The Licensee represents and warrants to Maha-Metro that -.....	65
17.2. Obligation to notify change:.....	66
ARTICLE 18 MISCELLANEOUS	67
18.1. Interest and Right of Set Off	67
18.2. Miscellaneous.....	69
ANNEXURES.....	72
ANNEXURE – 1 DETAILS OF BUILT-UP SPACE OFFERED FOR LICENCING	73
ANNEXURE – 2 : LIST OF USAGES BANNED/ NEGATIVE LIST	74
ANNEXURE-3 : HANDING OVER NOTE	75
ANNEXURE 4 – TAKING OVER NOTE.....	76

Part I- Preliminary

LICENSE AGREEMENT

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

BETWEEN

1. **Maharashtra Metro Rail Corporation Limited**, a company incorporated under the Companies Act, 1956/2013, having its registered office at "Metro House, 28/2 Anand Nagar, C K Naidu Road, Civil Lines, Nagpur-440001" (hereinafter referred to as "Maha-Metro (NMRP)" and/or the 'Authority'), which expression shall, unless it be repugnant to the subject or context thereof, include its administrators, successors and assigns)) of the ONE PART;

AND

2. a company/Partnership Firm/Proprietorship Firm/Society/Trust incorporated/registered under the provisions of the Act, bearing registration Number and having its registered office at, (hereinafter referred to as the "Licensee" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

- (A) Maha-Metro, with a view to augment its revenues through non-operating measures/earnings, had invited open bids (by its Tender No. . _N1PD-08/2019_ dated 02.01.2019 (the "Request for Proposal" or "RFP")) from the interested parties for *Licensing of Built-up Spaces at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jaiprakash Nagar Metro Station of Nagpur Metro Rail Project for a period of 30 Years*. After considering the offers, Maha-Metro has selected M/s. as "Licensee" for assigning licensing rights of built-up space/s no. admeasuring Sqm as given in Annexure-I at Metro Station of Nagpur Metro Rail Project, hereinafter called "Licensed Space", on "as is where is basis".
- (B) Maha-Metro has agreed to provide to the Licensee, the Licensing Rights of Licensed Space (pre identified by Maha-Metro) on "as is where is basis", on payment of Upfront Premium and Annual License Fee (combinely to be referred as the Total Consideration) and other charges to Maha-Metro on the terms and conditions hereunder contained in this License Agreement.
- (C) The Licensee shall be responsible to develop, furbish, finish, manage, operate and maintain the Licensed Space, licensed to them as specified in this Agreement, at its own cost and expense.
- (D) It is deemed necessary and expedient to enter into this Agreement to record the terms of the said Agreement..

NOW THEREFORE, in consideration of the mutual promise and consideration set out herein Maha-Metro and the Licensee (hereinafter collectively called "Parties") witnessed and hereby agree as follows:

A. The Licensee hereby covenants as follows: -

- i. Licensee hereby assumes responsibility for the Licensed Space bearing No. as assigned to him by Maha-Metro at Metro Station of Nagpur Metro Rail project as given in Annexure-I. The Licensee shall be responsible to finish/furbish, manage, operate, maintain and use, the Licensed Space as specified in this Agreement at its own cost and expense.
- ii. Licensee irrevocably agrees to make all payments including the applicable Upfront Premium and the Annual License Fees as per this Agreement as and when due, without delay or demur, without waiting for any formal advice from Maha-Metro in this regard.
- iii. The Licensee confirms having examined the potential locations inside theMetro station in detail and fully understands and comprehends the technical requirements of the built-up structure. The Licensee also confirms full satisfaction as to the business viability of the Licensed Space inside the metro station and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account. The Licensee also confirms having made independent assessment of present and future market potential and no future claim what so ever regarding change in market circumstances shall be used by it as an alibi or excuse grounds for non-payment of Annual License Fees and other amounts payable to Maha-Metro under this License Agreement.

B. That Maha-Metro and Licensee represent and warrant that they are empowered, authorized and able to make this agreement.

In Witness whereof the parties hereto have caused this agreement to be signed in their respective hands as of the day and year first before written.

.....-2019

.....- 2019

Draft License Agreement for 'Licensing of Built-up Spaces at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jaiprakash Nagar Metro Station of Nagpur Metro Rail Project for a period of 30 Years.'

(.....)

(.....)

Authorized Signatory

FOR AND ON BEHALF OF

FOR AND ON BEHALF OF Licensee

MAHARASHTRA METRO RAIL CORPORATION
LIMITED

In Witness whereof the Licensee and the Maha-Metro have set their hands hereunto on the day, month and year first written above in the presence of the following witnesses:

Maha-Metro

Licensee

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1. Definitions

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

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

"Agreement" or "License Agreement" means this License Agreement to be executed between Maha-Metro and the Selected Bidder in the format approved by Maha-Metro and includes any amendments, annexure hereto made in accordance with the provisions hereof, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Applicable Laws" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, 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" means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the respective property business space during the subsistence of this Agreement. ;

"As is where is basis" means License of the said built-up/property business space including all equipments, installations, fittings and fixtures is given on 'as is where is basis'. The licensee may make additions or alterations in the licensed space, carry out various installations including electric installations and wiring, with the prior permission of Maha-Metro in writing at its own cost. Licensee shall not be entitled for any compensation with regard to additions carried out by them in the licensed property business space. Licensee shall be required to hand over the Licensed Space at the end of license period.

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

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

"Bank" means any Nationalised/Scheduled Commercial Bank of Indian or Foreign origin having

business office in India;

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

"Bid Security" means the security provided by the Licensee to the Authority along with the Bid, in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"Commence Date " or "Handover Date" shall have the meaning set forth in Clause 9.1;

"Commercial Operation Date" shall mean the immediate next day of completion of moratorium period or commercial operation date of the station, whichever is later.

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

- (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 judgement of a court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid; or
- (e) any change in the rates of any of the Taxes that have a direct effect on the Project;

"Damages" shall mean any claim of Maha-Metro against the Licensee for breach of this Agreement, including but not limited to, losses, dues, arrears etc. against which Maha-Metro shall be entitled to claim and adjust the Security Deposit/ Performance Guarantee.

"Drawings" means all of the drawings, calculations and documents pertaining to the property business space and shall include 'as built' drawings;

"Effective Date" means the date of signing of License Agreement or the date of handing over of property business space, whichever is later;

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

"Force Majeure" or "Force Majeure Event" shall have the meaning ascribed to it in ARTICLE 14 FORCE MAJEURE;

"GOI" or "Government" means the Government of India;

"Interest Free Security Deposit" means interest free amount to be deposited by the Licensee with Maha-Metro as per terms and conditions of License Agreement as a security against observance of License Agreement and the payment of all dues as per terms and conditions of the License Agreement.

"License" means the licensing rights granted by Maha-Metro to the Selected Bidder with respect to the property business space, based on the terms and conditions of the License Agreement.

"Licensee" means the Selected Bidder, who has executed the license agreement with Maha-Metro pursuant to bidding process for carrying out commercial activities (any activity excluding banned list of usage of premises) within the allotted property business spaces of Metro Station.

"License Period" means a period of 30 years from the Effective Date and ending on the Transfer Date;

"Licensed Space" means the specified built-up spaces at Metro station for commercial operations, handed over by Maha-Metro to the licensee under and in accordance with this License Agreement.

"License Fees" shall have the meaning set forth in ARTICLE 4 TOTAL CONSIDERATION TO MAHA-METRO;

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

"Permits" shall mean and include all applicable statutory, regulatory licenses, authorization, permits, consents, approvals, registrations and franchises from concerned authorities.

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

"Scope of the Project" shall have the meaning set forth in ARTICLE 2 SCOPE OF WORK;

"Selected Bidder" means the bidder who has been selected by Maha-Metro, pursuant to the bidding process for award of license.

"State" means the State of Maharashtra and "State Government" means the government of that State;

"Taxes" means and includes all taxes, fee, cesses, levies that may be payable by the Licensee under the Applicable Law to the Government or any of its agencies;

"Termination" means the expiry of the License period or termination of this Agreement and the License hereunder, whichever is earlier;

"Total Consideration" shall have the meaning set forth in ARTICLE 4 TOTAL CONSIDERATION TO MAHA-METRO;

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

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 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 construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words **"include"** and **"including"** are to be construed without limitation and shall be deemed to be followed by **"without limitation"** or **"but not limited to"** whether or not they are followed by such phrases;
- (f) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (g) any reference to day shall mean a reference to a calendar day;
- (h) references to a **"business day"** shall be construed as a reference to a day (other than a Sunday) on which banks in Nagpur are generally open for business;
- (i) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (j) 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;
- (k) 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;
- (l) the words importing singular shall include plural and vice versa;
- (m) references to any gender shall include the other and the neutral gender;

- (n) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
- (o) "**indebtedness**" shall be construed so as to include any obligation (whether accrued as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (p) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganisation**" 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, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (q) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (r) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party, in this behalf and not otherwise;
- (s) 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;
- (t) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (u) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on per diem basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and
- (v) time shall be the essence in the performance of the Parties' of respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

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

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

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

1.3. Measurements and arithmetic conventions

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

1.4. Priority of agreements, clauses and schedules

- i 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) The Bid/Tender Document along with all the corrigendum issued.
 - (c) 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) and (c), (b) above shall prevail over the agreements and documents at (c) above.
- ii Subject to the provisions of Clause i, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
 - (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
 - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
 - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
 - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
 - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
 - (f) between any value written in numerals and that in words, the latter shall prevail.

ARTICLE 2 SCOPE OF WORK

The scope of the work ("the "Scope of the Project") shall mean and include the following:

2.1. General Terms and Conditions

- a. Brief details of the separate units of commercial space available in the station are as follows:

Sr. No.	Station Name	Property Business Space Number	Level/Floor	Location	Area (In Sq. Mts.)
1	Khapri Metro Station	KRI/PD-01	Mezzanine Level	Unpaid Area	237.11
2	Khapri Metro Station	KRI/PD-04	Mezzanine Level	Unpaid Area	237.11
3	New-Airport Station	NAPT/PD-01	Road Level	Unpaid Area	119.7
4	Airport Metro Station	APOT/PD-01 & G-02	Road Level (301.22 sqm) + Basement (143.84 Sqm)	Unpaid Area	445.06
5	Airport Metro Station	APOT/PD-05	Concourse Level	Unpaid Area	126.88
6	Airport Metro Station	APOT/PD-06 & G-03	Concourse Level (399.50 Sqm) + Basement (314.20 Sqm)	Unpaid Area	713.7
7	Jaiprakash Nagar Metro Station	JIN/PD	Road Level	Unpaid Area	291.83
8	Jaiprakash Nagar Metro Station	JIN/PD-01	Concourse Level - 1	Paid Area	105.24
9	Jaiprakash Nagar Metro Station	JIN/PD-02	Concourse Level - 1	Paid Area	106.76
10	Jaiprakash Nagar Metro Station	JIN/PD-05	Concourse Level - 2	Unpaid Area	1099.13
11	Jaiprakash Nagar Metro Station	JIN/PD-06	Concourse Level - 2	Paid Area	313.85
12	Jaiprakash Nagar Metro Station	JIN/PD-07	Concourse Level - 3	Unpaid Area	812.81

Note : At the time of signing the license agreement, separate license agreement will be signed for each PB space.

2.2. Scope of Work

- a. The Licensee shall, at its sole expense and risk, carry out the financing, construction, procurement, management, operations and maintenance of the Licensed Area in accordance with the provisions of this Agreement.
- b. The offered space/s as referred above will be provided on "as is where is basis" and Maha-Metro shall provide -
 - o Electricity as per terms and conditions indicated in Annexure-..... of Draft License Agreement.

- All necessary modification shall be carried out by the licensee at its own cost after taking valid prior written permission from Maha-Metro. If there is any damage/loss to any structure/asset of Maha-Metro their cost shall be borne by the licensee.
- The Bidder can use the parking facility available/provided at the project site. The usage of parking shall be subject to payment of applicable parking charges as decided by Maha-Metro/nominated agency from time to time.
- c. The built-up space shall be provided to successful bidder/s on license basis for a period of 30 Years. The project shall include furbishment/finishing, operation and maintenance of the property business Space at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jaiprakash Nagar Metro Station (as earmarked in key plan) for a period of 30 Years.
- d. It shall be responsibility of the successful bidder/s to furbish/finish the entire offered space for commercial utilization at their own cost and as per the approval of Maha-Metro.
- e. Activities allowed in the licensed premise shall be governed by the extent provisions of any activities permitted by the Maha-Metro under the administrative jurisdiction. Indicative nature of the activities and facilities that are allowed at the Licensed Space(s) are as under:
 - Shopping complex / shopping mall / shopping plaza
 - Departmental Store, Discount Store, Hypermarket
 - Restaurants, Fast Food Stalls, Kiosks, food court, hotel (only electric based re-heating will be allowed)
 - Offices, Banks, lounge.
 - Educational Institutes, coaching centre
 - Computer Training Centres, IT centers
 - Store
 - Showrooms for Consumer goods like Garments, Electronics / electrical Items, general utilities, automobiles etc.
- f. The Licensee may use or allow the use of the Licensed Area for other activities which are not envisaged in point no. (e.) above, only after taking prior written approval of Maha-Metro.
- g. The space(s) can be used for any activity except for activities mentioned in list of banned usages/ negative list placed at Annexure-2. Maha-Metro has full right to ensure strictly that there is no violation in this regard.
- h. The Successful bidder shall be required to adhere to the building design, but there are no limitations on planning and subdivision of the interior floor space without damaging the metro station structure or part thereof. However, within these parameters, maintaining the structural safety and integrity shall be the sole responsibility of the successful bidder. The Successful bidder shall also ensure that the furbishing within tendered area is not a safety hazard for MAHA-METRO civil structures and public at large. The successful bidder shall also ensure that all existing utilities and facilities (if any) falling within the said tendered space will be kept accessible and the successful bidder shall not interfere or tamper with those installations at any time.

- i. Notwithstanding anything mentioned above, the successful bidder is required to adhere to the provisions of the prevailing National Building Code applicable for metro stations for the various works to be undertaken within the tendered space.
- j. The successful bidder shall be solely responsible for procuring all the permissions/ licenses etc. required from the statutory/ regulatory/ civic authorities concerned, to be able to use the tendered space for desired commercial purposes/ business. MAHA-METRO shall not be responsible for any such procurement and shall not entertain any claims in this regard.
- k. Firefighting and other infrastructure so created within the tendered space must be integrated with the infrastructure already provided /planned for the respective metro station by MAHA-METRO.
- l. The successful bidder shall at all times adhere to all provisions of the Metro Railway (Operation And Maintenance) Act, 2002 and amendments thereto and shall also comply with all notices and circulars issued by MAHA-METRO in this regard.
- m. Operate, manage and maintain the entire offered space with adequately trained and experienced team for responsibilities as defined in this tender document.
- n. Under no circumstances, shall the tendered space or facilities constructed or installed at the licensed space / tendered space be mortgaged, charged or otherwise put under any lien (including negative lien), charge or encumbrance be created or agreed to be created in favour of any person, including the Lenders/ Financial Institution (s)/ Banks etc.
- o. The licensee shall not be allowed to monetize the License area, facilities, constructions or installations therein, through Real Estate Investments Trusts (REITs)/Infrastructure Investment Trusts/etc.
- p. The successful bidder ensures that no polythene baggage is utilised/used at the tendered area/ licensed area. Moreover, Successful bidder shall ensure the proper segregation of food waste i.e. dry and wet waste (if any) before disposal of same.
- q. The Licensee shall be responsible to keep the license space and surrounding area neat and clean.
- r. Comply with all statutory requirements in connection with this tender document.
- s. Ensure regular and timely payments of all amounts due to MAHA-METRO and discharge all obligations as per provisions of this tender document.
- t. Payment of all statutory taxes, service tax, local levies, statutory dues, etc. as and when due and as applicable.

2.3. Handing over of tendered space

- i. After the evaluation of bids, Letter of Acceptance (LOA) will be issued to the successful bidders. The tendered (bare) space, as mentioned in Annexure-1, shall be handed over for operations and maintenance within 10 (ten) days from the date of signing of License Agreement.
- ii. The successful bidder shall not be eligible to claim any compensation on account of any delay in handing over of respective property business space to him.

- iii. Areas indicated above are approximate. Actual area (carpet area) shall be measured at the time of handing over of space(s). If there is any variation in area the License Fees shall be charged on pro-rata/ actual area basis. Interest free security deposit will not be readjusted if the variation in area handed over is up to 10% else while security deposit will be readjusted according to actual area of the shop.
- iv. Subsequently, if the successful bidder applies for additional 'adjacent / same area' (even if for utility) up-to 10% variation in the tendered area within the fitment period (as defined below), the same shall be provided on pro-rata basis, if found feasible, at the sole discretion of MAHA-METRO. For area beyond this time frame and/or above 10% variation range of tendered area, the same shall be provided on negotiated / market rate, if found feasible, on the sole discretion of MAHA-METRO. MAHA-METRO is free to market, area beyond this time frame and/or above 10% variation on open/limited/single tender basis. The license fee for such additional space shall commence after the expiry of 30 days from the date of handing over of space.
- v. Consequent to any alteration / renovation of the licensed / tendered space, for which prior approval from MAHA-METRO has been taken by the successful bidder, if resulting in any decrease in the handed over area, the variation shall not be considered for any change in the license fee or other payment terms. However, at the time of termination / surrender or natural completion of contract, MAHA-METRO reserves the right to ask the successful bidder to restore the licensed premises as per original allotment.
- vi. If the successful bidder installs an awning with a fixed / stretchable length of 3 feet to shield the premises / commuters from sunlight/ rain/ adverse weather conditions, the same shall not be charged, provided licensed premises is having opening outside station building. Awning beyond fixed/stretchable length of 3 feet is not allowed.
- vii. As evident from the delineated plans, these areas mentioned in above table, apart from carpet area also include the area of balconies, refuge areas, common areas like staircase, lift lobby, ducts area etc. (the "Common Area"). The Licensee shall have no exclusive rights for using the Common Area which shall only be used for the intended purposes. The Common Areas shall not be allowed to be encroached or used for any other purpose and any encroachment of the Common Area shall be construed as breach of the License Agreement inviting action as applicable for breach of the same.
- viii. At the time of termination/natural completion of license, MAHA-METRO reserves the right to ask the successful bidder to restore the said tendered/ licensed space as per original allotment.
- ix. The Licensee acknowledges and accepts that the parking facility shall be as per the availability of the Project Site and no special arrangement or exclusive parking area shall be provided by Maha-Metro.

2.4. Works to be executed

- i. Licensee shall be required to execute all works as required for the commercial use in the Licensed Space(s) without damaging any loads bearing / structural members and any services /

utility etc. The works to be executed by Licensee shall include but shall not be limited to the following:

- a. To complete the construction work associated with the licensed space/s within moratorium period. All external/internal finishing works including walls, internal partitions, doors, flooring, plastering, painting etc.
- b. Toilets and pantry –
 - All the finishing works of toilets (if any) in respective property business space including internal partition, plastering, dado work, flooring, internal fixtures, plumbing and connection with outlet provided by Maha-Metro for both for water supply and drainage at each floor (only applicable when the toilets and surrounding area is being handed over to Licensee for its exclusive use)
 - Make necessary arrangement for drinking water from the drinking water outlet provided by Maha-Metro, installation of meters/sub-meters, storage and purification after taking all the approvals.

Note: The above list is only indicative, and Bidders are required to make their own assessment of the works needed as per their requirement.

- ii. In case where infrastructure facilities as required to be provided by MAHA-METRO are not available and provision of the same is likely to be delayed, MAHA-METRO may permit the Licensee to execute those infrastructure works in full or in part on behalf of MAHA-METRO.
- iii. The specifications and rates of these works shall be agreed upon between MAHA-METRO and the Licensee in writing. During execution, works shall be inspected by authorized representative of Maha-Metro to ensure their execution as per prescribed specifications.
- iv. The amount payable to Licensee for execution of above-mentioned infrastructure works, shall after their successful execution, be adjusted against bills raised on them for payment of recurring charges. The adjustment for amount so payable to the Licensee against payment for infrastructure works executed by him may also be made in part, to facilitate his cash flow without prejudice to adjustment of the final amount to be reckoned after completion of works.

Note : It is to be noted that construction of mezzanine (mid) floors/ Lofts within the property business space shall not be permitted by Maha-Metro under any circumstances.

2.5. Property Tax and Registration of License Agreement

- a. The property tax applicable, if any, on the license space shall be borne by the Licensee. The property tax if applicable shall be paid by Maha-Metro and shall be recovered from Licensee, proportionate to the license area.
- b. Payment of stamp duty for execution & registration of license agreement, if any, to be executed in pursuance of this bid shall be solely borne by successful bidder/Licensee.

2.6. Infrastructure Services

1. It shall be mandatory for the Licensee to follow Green Building norms while doing the renovation/finishing/furbishing of the respective property business space(s).
2. The Internal distribution of electric power, air conditioning systems, fire fighting sprinklers, fire detection, advisable fire alarm panel etc. as per the norms required for the Licensed Space(s) shall be provided by the Licensee at his own cost.

The Licensee shall be required to take prior approval from the respective departments of MAHA-METRO regarding the use of available infrastructure like electricity, water, air conditioning etc.

The licensee shall follow the "Fitout Guidelines" issued by MAHA-METRO and comply with the same and its further amendments as issued from time to time.

3. The Licensee shall submit all plans / drawings and specification of material whatsoever including but not limited to construction, internal partitions, fire detection & fighting, flooring, lighting, electrical, signage advertisement panels etc; for approval of MAHA-METRO before start of any work/s inside the Licensed Area. The MAHA-METRO reserves the right not to give approval if it deems such works may act as a hindrance in the smooth functioning of its operations at the Project Site. All materials to be used including electrical materials should be fire resistant and should meet the minimum specifications as mentioned in the respective National Building Code applicable for metro stations and other relevant IS Codes. The prior approval of MAHA-METRO is mandatory before commencement of the installation.
4. The Maha-Metro officials of Property Development Department, Civil Department, Electrical Department and MEP (Fire-Fighting) Department of the MAHA-METRO will have full and unfettered access to inspect and check the materials before and after the installation, and during the license period. All instructions issued by them in this regard will be complied by Licensee in full and within time stipulated by the said officials. No claim or compensation will be sought by the Licensee on this account.
5. Electricity, Installation of DG sets, Air Conditioning and Fire Fighting & Fire Protection:
 - i) The Licensee shall have to take power connection from MSEDCCL/respective power distribution company directly. The Licensee shall be responsible to pay its respective electricity bills directly to the concerned power distribution company.
 - ii) If the power is taken from Maha-Metro grid, Maha-Metro will supply electric power @ 0.29 KVA /Sqm for each tendered space, at one point located at respective floor of each property business space (existing panel/isolators installed at electrical rooms of respective metro stations). Further, LT transformation and distribution will be the responsibility of the successful bidder. The tariff and all terms and conditions will be as per the appropriate electric authority regulations as applicable from time to time. Licensee shall have to maintain its power demand within the power allocated.
 - iii) DG power available in MAHA-METRO network will not be made available to successful bidder.
 - iv) All costs of shifting of existing lighting/small power sockets circuits/ AHUs etc. if any, that are in tendered space, would be borne by the successful bidder. This would include all cost involved in shifting/modification/addition.

- v) Successful bidder has to carry out all works for functioning of tendered area on their own with all cost including installation & commissioning of MCB/MCCB/ELCB in spare space of Panel at respective floor, ongoing feeders from panel, cable laying, cable trays, hangers in cable route, earthing, internal wiring, lighting, power distribution etc.
 - vi) Any addition / up-gradation/ modification of existing electrical power system works if required, are to be taken up subjected to technical feasibility and approval from MAHA-METRO, If approved, same work can be carried out by successful bidder along with associated costs.
 - vii) Successful bidder shall install only LED electrical lights and energy efficient Air-Conditioners to ensures energy conversation
 - viii) Any augmentation to existing fire protection system, if required for licensed space as per norms of Maha-Metro and Nagpur Fire Services Department, shall be done by the successful bidder at his own risk & cost after obtaining necessary approval from Maha-Metro as well as Nagpur Fire Services Department.
6. Fire Fighting & Fire Protection
- i. All equipment's, pumps & common piping etc required to be installed outside Licensed Area for firefighting arrangements will be provided by MAHA-METRO up-to one point outside or near the Licensed Area, from where the Licensee will take the tap off & make further arrangement inside licensed areas for fire-fighting.
 - ii. Inside the Licensed Area, all fire-fighting arrangements, including the fire alarm & detection system for above & below false ceiling shall have to be provided by the Licensee including repeater panel at station control room and integrated in seamless manner with the MAHA-METRO system. Such fire-fighting arrangements would conform to the National Building Code, relevant Building Byelaws/ IS Codes, Fire Safety (Fire Prevention) Rules & any other instructions issued by MAHA-METRO in this regard.
 - iii. Only after certification by the O&M officer / authorized representative of MAHA-METRO, shall the Licensee be permitted to occupy and use the Licensed Space(s) for commercial purposes.
 - iv. The MAHA-METRO reserves the right to inspect the Licensed Space(s) at any time during the License Period in connection with fire-fighting readiness. MAHA-METRO may also issue directives in this regard, which shall have to be adhered to and complied by Licensee. Any additional works as may be indicated on this account will also be carried out by the Licensee at its own cost. No claim for damages or compensation for inconvenience in this regard will be entertained by the MAHA-METRO.
7. Water supply:
- Water supply will be arranged by MAHA-METRO and provided at one point within the station premises. The successful bidder will have to make their own arrangements for drawing pipe lines from aforesaid point to tendered / licensed area at their own cost. Further, successful bidder will have to make its own arrangement for distributions of water including the installation of meters, storage and purification at its own cost after taking all necessary approvals. The discharge of all

wastes including the drainage shall also be arranged by the successful bidder at their own costs and in this connection it shall follow all the directives as may be issued by the authorized representative of the MAHA-METRO. The water charges shall be charged on actual basis and shall be charged as per commercial rate of water, as decided by Nagpur Municipal Corporation from time to time.

The additional area as may be required for the purpose of placement of utilities such as water tanks, etc will be charged at a rate equivalent to half the rate (recurring payment) per square meter charged / accepted for the main Licensed Area.

8. Civil Utilities:

Public toilets are available at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jai-Prakash Nagar Metro Station. Water drainage and sewerage system for the existing space utilization is also made available. If any augmentation to the existing civil utilities such as toilets, drainage, sewer and water supply system etc becomes necessary within the proposed built-up spaces, it shall be done by licensee at their cost subject to prior approval of MAHA-METRO. Maha-Metro reserves the right to accept or reject the request made by Licensee.

9. Disposal of Waste:

The licensee shall have to make their own arrangements for daily disposal of waste (after segregation of dry and wet waste) out of MAHA-METRO premises. The wastes shall be dumped at sites approved by concerned civic agencies to ensure perfect cleanliness. If any kind of waste is found disposed off on MAHA-METRO land or premises a penalty/fine of Rs. 5000/- per instance shall be imposed by MAHA-METRO for each occasion.

10. Security and other services:

MAHA-METRO shall provide reasonable security services in Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jai-Prakash Nagar Metro Stations, general cleaning & adequate lighting in the common areas and compound lighting outside the building, operation of existing lifts. In the event that any one of the services provided by MAHA-METRO may be interrupted or suspended by reason of accident, repair, alterations, strikes, lockout, etc MAHA-METRO shall not be liable for any compensation to the Licensee, however, MAHA-METRO shall use its best efforts to restore such services as soon as reasonably possible.

11. Space for chiller plant.

- E&M equipment's, lifts, escalators, chiller plant, HVAC system, fire fighting arrangement etc. shall have to be provided by the Licensee as per the requirement, at its own cost. If desired by Licensee and the space is available within the metro station, Maha-Metro may provide additional space to Licensee for installation of Chiller Plants, however this shall be subject to written request from Licensee and payment of additional License Fees for availing such utility areas.

12. The Licensee shall ensure that all relevant approvals / NOC for different commercial activities are obtained by him from respective departments. He shall also ensure:

- a. Maintenance of its fire equipment's in good condition at all times.
 - b. Availability of trained staff round the clock at PD premises.
 - c. No additions/ alterations are done without the prior approval of competent authority of the MAHA-METRO.
 - d. Record of periodic check of fire equipment's and installation is maintained as per relevant code of practice.
 - e. Deviation if any may be brought to the notice of the MAHA-METRO on account of its being the controlling authority.
13. Further, it is clarified that the Licensee will be completely responsible for any loss of life or property in case of an emergency and/or due to the non-functioning of the fire safety system that is exclusively under scope and control of Licensee. The MAHA-METRO shall not be responsible for any loss of life and property in PD premises due to any malfunctioning of the fire system in case of any fire emergency within the Licensed Area.

2.7. Signages and Advertisements

- a. The Licensee shall have the right to display signage(s) of suitable size for displaying its generic name of each Space. The signage may be illuminated or non-illuminated at the Licensee's option, however it shall need to confirm to all governmental laws, regulations or ordinance relevant thereto. The Licensee shall also need to obtain a written approval from MAHA-METRO before putting up any form of signage and MAHA-METRO reserves the right to refuse or to suggest an alternation to the same. The size, shape, location, etc. of signage are subject to architectural controls to be issued by MAHA-METRO. Signage should be used only for the business being run by the Licensee in the licensed premises. In addition, the Licensee shall also be required standard materials as per standards prevalent in MAHA-METRO, for which he shall seek necessary approval from MAHA-METRO.
- b. Space for 1 common totem pole shall be provided by the MAHA-METRO without any additional License fee at a suitable location. Space for Totem pole will be provided on the Ground/ Concourse floor of appropriate size. The totem pole shall be backlit. Branding of all the property Business spaces shall be done on the common totem pole. The installation cost, electricity consumption charges, taxes etc. (if any) shall be borne by the Licensee.
- c. No advertisement in any format shall be permitted on the outer surface of the Licensed Space. However, the licensee shall be allowed to use interior of the Licensed Spaces for display of advertisement only about the business / commodity being run / sold by the Licensee in the Licensed Space(s).
- d. The Licensee shall need to obtain a written approval from MAHA-METRO by way of a notice before putting up any form of signage/ advertisement within/outside their premises and MAHA-METRO reserves the right to refuse or to suggest an alternation to the same. The signage/ advertisement shape and location etc are subject to architectural controls to be issued by MAHA-METRO.
- e. Placement of signage/ advertisement without the permission of MAHA-METRO or placement in non-approved locations shall attract a penalty of Rs.5000/- per signage/ advertisement on the first occasion and Rs.50,000/- per signage/ advertisement on the second occasion. In case of

persistence default, MAHA-METRO reserve the right to terminate the agreement with forfeiture of the (interest free) security deposit and advance License fee paid in its favour.

- f. MAHA-METRO shall not unreasonably interfere with the signage/ advertisement plan. If MAHA-METRO is not satisfied and raises any objections, the licensee shall be required to appropriately amend/ modify his scheme within a reasonable timeframe and seek MAHA-METRO approval once again

2.8. Extension of Date of Commencement / Moratorium Period / License Period

- a. If in event of, delay in handing over of premises by Maha-Metro, either Commencement Date or Moratorium Period or License Period individually or in combination may be extended suitably, as in the opinion of Maha-Metro are reasonable having regard to the nature and period of delay.
- b. Apart from above, the Licensee shall not be eligible for any other compensation for works so carried forward to the extended period of time. In addition, Licensee shall also make constantly its best endeavours to bring down or make good the delay and shall do all that may be reasonably required to the satisfaction of MAHA-METRO to proceed with the works.
- c. Any failure or delay by MAHA-METRO to provide the Licensee possession of the Licensed Space(s), or to give the necessary permission or necessary drawings or instructions or any other delay caused by the MAHA-METRO due to any other cause whatsoever, then such failure or delay shall in no way affect or vitiate the License Agreement or alter the character thereof or entitle the Licensee to any damages or compensation.
- d. Nevertheless, in the event of the delay being due to reasons being attributable to Licensee, or its failure to complete its obligations within specified time as per the License Agreement, for the reasons other than the reasons attributable to MAHA-METRO, Licensee shall not be entitled for any extension of date of Commencement Date or Moratorium Period or License Period whatsoever.

2.9. Grace Period

- i. The Grace period of 90 (ninety) days is proposed for the project. The Grace period shall be at the end of License tenure.
- ii. The Grace period shall be free of cost i.e. no License Fee will be charged for this period
- iii. If, the Licensee fails to vacate the premises within the grace period penalty of twice the prevalent monthly Licensee Fee shall be chargeable for occupation for this 90 days period. And after lapse of this 90 days grace period, MAHA-METRO shall take over the goods / property treating at NIL value, even if it is under lock & key: and MAHA-METRO shall be free to **dispose of** the goods / property in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages after completion of grace period. **If** licensee fails to pay the penalty applicable in case of non-vacation of premises, the same shall be adjusted from the Interest Free Security Deposit / Performance Security available with MAHA-METRO. No grace period shall be provided to **licensee if** the licensee decides to terminate the contract within the lock-in period.

2.10. Other Conditions

- a. If during the License period, any loss of property and/or life takes place, the loss and account of the same shall be borne entirely by the Licensee and MAHA-METRO shall not be liable for any such claims. The Licensee would be responsible for all the payments arising out of any third party claims. The Licensee is advised to procure insurance for meeting such liabilities at his own cost.
- b. Licensee shall provide unfettered access to the authorized representative of MAHA-METRO and its operation staff for the purpose of maintenance works (with respect to Nagpur Metro Rail Project), if applicable, inside the specified area at all times during the License period.
- c. MAHA-METRO shall not be made party in any litigation arising between the Licensee and any third party during and/or associated with the refurbishing/finishing and operations/maintenance of the property business space. All civil and criminal liability shall be the responsibility of the Licensee.
- d. The Licensee shall not employ any person who is under the age of 18 years.
- e. Entry and access in paid area by the workmen of the licensee shall be through smart card and its cost shall be borne by the licensee. Identity Cards shall be issued by Maha-Metro but these ID cards shall not be applicable for making journey in trains and entry/ exit to paid areas of Stations. All the Licensee's personnel shall be required to possess ID card while working in MAHA-METRO's premises as per prevailing procedure. Access inside the stations in paid areas shall be through smart cards as per prevailing applicable charges, in addition to the valid ID cards.
- f. The Licensee shall not have any right to infringe the Maha-Metro premises (other than the area licensed to him) and normal business, operation and commuters' facilities of Metro Rail Services.
- g. Upon observation of any such infringement the Authority shall issue a notice of compliance. If the Licensee fails to comply with three such notice and continue such infringement, the authority shall have right to impose a penalty of Rs. 5000/ per day. This penalty shall be in addition to License Fees & other taxes payable to Authority. In the event if penalty is imposed on Licensee for 3 times during the entire License tenure, then the agreement shall be liable for termination, subject to decision of Maha-Metro.
- h. It shall be mandatory for the Licensee to follow the operational timings of Nagpur Metro Rail.

ARTICLE 3 GRANT OF LICENSE

3.1. The License

3.1.1 Subject to and in accordance with the terms and conditions set forth in this Agreement, and in particular subject to the due fulfillment of all the obligations assumed towards Authority by the Licensee, Authority hereby grants and authorizes the Licensee to the following (the "Specified Purpose") :

- a. To have access to Licensed Space(s) during the License Period, develop, finance, commission, operate, manage and maintain the Licensed Space(s) during the License Period at the cost and risk of the Licensee. Any development made by the Licensee on the Licensed Space(s) shall be deemed to be the property of Maha-Metro and all the rights of the Licensee in the Licensed Space(s) shall relinquish in the favour of Maha-Metro.
- b. Subsequent to the Moratorium Period, to utilise the licensed space, at its own costs and risk, for carrying out activities stated at Point No. 2.2 (e) during the License Period on the terms and conditions stated herein and derive income from it.

3.1.2 Maha-Metro may at its sole discretion, subject to availability and technical feasibility and if the same will not in any manner affect the operation of the other activities of Maha-Metro, provide additional area to the Licensee on terrace of the Licensed Area and/or on the ground floor for installation of utilities and services such as water tanks, air conditioning plants and generators etc. on commercial terms mentioned in this Agreement.

3.1.3 Nothing contained herein, including the act of granting permission to develop the Licensed Space(s) and use of the developed licensed Area or any part thereof shall vest or create any proprietary interest in the Licensed Area or any part thereof including any permanent fixtures, fittings, etc. installed in the Licensed Area in favour of the Licensee or any part thereof or any other person claiming through or under the Licensee. The Licensee shall not in any manner sell, transfer, assign, sub-lease, sub-license, mortgage, charge, create any lien or otherwise encumber or deal with the Licensed Area in any manner whatsoever.

3.1.4 Subject to and in accordance with the provisions of this Agreement, the License is hereby granted and shall oblige or entitle (as the case may be) the Licensee to:

- (a) Right of Way, access and licence to the property business area i.e. builtup area allotted for the purpose of and to the extent conferred by the provisions of this Agreement;
- (b) manage, operate and maintain the property business space allotted and regulate the use thereof by third parties;
- (c) demand, collect and appropriate revenue from the users for using the property business area or any part thereof;
- (d) perform and fulfil all the Licensee's obligations under and in accordance with this Agreement;
- (e) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Licensee under this Agreement; and

- (f) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the License hereby granted or on the whole or any part of the Project nor transfer, License or part possession thereof.

3.2. Grant subject to obligation

3.2.1 It is clarified that the rights granted in respect of operation and maintenance of the property business space under this Article 3 to the Licensee are subject to the conditions attached to exercise of such rights and performance of its obligations as set out in the Agreement and other documents executed pursuant to the Agreement.

3.3. Lease Period

- a. The LEASE is hereby granted in favour of the Licensee for a total period of 30 (Thirty) years from the Commencement Date subject to unless otherwise terminated by Maha-Metro or surrendered by the successful bidder, in term of provisions of License Agreement.
- b. The tenure of License Agreement shall commence from the date of handing over of the property business space.
- c. Tenure of the License Period of any additional space handed over subsequently shall be co-terminus with above period irrespective of date of actual handing over for such additional space.
- d. There shall be a lock in period of five (5) years from the date of commencement of agreement/ handing over of licensed space.
- e. The Successful bidder shall have option to exit from the License Agreement immediately after completion of lock in period of 5 (five) years. For it, the Successful bidder shall have to issue 180 days prior notice to MAHA-METRO. Such prior notice intimation can be given after four and half (4 ½) years however option to exit will be available only after five (5) years. The exit clause shall be as per provisions of clause
- f. At no time during the license tenure, the Licensee shall be allowed to surrender partial Licensed Space which has been handed over to the Licensee by Maha-Metro.
- g. At the end of License period or in the event of termination of this agreement prior to completion of license tenure, for any reason whatsoever, all rights given under this License Agreement shall cease to have effect and the premises shall revert to Maha-Metro, without any obligation to Maha-Metro to pay or adjust any consideration or other payment to the Licensee.
- h. The tenure shall be inclusive of fitment period as applicable for the tendered space.
- i. On completion/ termination of License Agreement, the Licensee shall hand over the space with normal wear & tear. The Licensee shall be allowed to remove its assets like temporary structure, furniture, almirahs, air-conditioners, DG sets, equipments, etc. without causing damage to the existing structure. However, the Licensee shall not be allowed to remove any facility, equipment, fixture, etc. which has become an integral part of the development plan of the space.
- j. At the end of the License Period or sooner determination of this Agreement for any reason whatsoever all rights given under this License Agreement shall cease to have effect and the Licensed Area with all the furniture and fixtures and other assets permanently attached to the

Licensed Area shall revert to Maha-Metro without any obligation on part of Maha-Metro to pay or adjust any consideration or other payment to the Licensee. The Licensee voluntarily gives Maha-Metro the right to seal the said Licensed Space(s) and remarket the same as part on its discretion upon Termination of this Agreement. No claim, compensation or damages will be entertained by Maha-Metro on this account.

3.4. Restriction on sub-leasing/sub-licensing the use of the Licensed Area or any part thereof

- a. The successful bidder shall not be entitled to sub-license/sublease the tendered/ licensed space.
- b. The successful bidder shall not assign any of its rights (including but not limited to sub-leasing/sub-licensing, marketing, promotion etc.) or interest in respect to the license agreement in favour of any company/person(s) at any time and for any reasons whatsoever.

DRAFT

ARTICLE 4 TOTAL CONSIDERATION TO MAHA-METRO

4.1. Charging of Total Consideration

- a. The Total Consideration shall consist of the Upfront Premium and Annual License Fees, payable as per the terms of the License Agreement. The Total Consideration shall be charged on actual area handed over to the successful bidder.
- b. The Total Consideration shall be calculated in the manner as follows –

$$\text{Total Consideration} = (\text{Upfront Premium}) + (16.07 \times \text{Annual License Fee})$$

4.1.1. Upfront Premium :

The upfront premium quoted by bidder mounting to Rs. is paid on in the form of bearing transaction reference No. from Bank.

4.1.2. The Annual License Fees :

- a. The Annual License Fees as quoted in the financial bid shall be paid on annual basis, during the entire License tenure. The payment of Annual License Fees applicable for the first year (prorata basis) shall be made within 30 days of issuance of LOA by the authority. The Annual License Fees shall be paid on advance basis shall be due one month prior to the commencement of each agreement year. The Annual License Fee shall be escalated by 20% after every three Years on compounding basis.
- b. The Annual License fee as applicable for the base year shall be computed as follows –

Annual License Fees =	License Fee per Sqmt. as quoted by Licensee (rate per sqmt per month)	*	Actual area of property Business space allotted to the Licensee.	*	12 months
------------------------------	--	---	---	---	------------------

- c. The applicable Goods and Service Tax (GST) along with applicable cess (if any) or any other taxes as applicable shall be payable in addition to the Total Consideration.
- d. The charging of Annual license fee shall commence immediately after the end of moratorium period as applicable for the respective property business space, irrespective of scenario where fitment period is exceeding the allowed period.
- e. The License Fees shall be paid in advance and shall be paid on yearly basis. The payment of Annual License Fees applicable for the first year (prorate basis after deducting the respective moratorium period) shall be paid within 30 days of issuance of LOA by the authority. The Annual License Fees shall be paid on advance basis shall be due one month prior to the commencement of each agreement year. The Annual License Fee shall be escalated by 20% after every three Years on compounding basis. The date of handing over of premises shall be treated as the day of commencement of License period/tenure.
- f. The license fee shall be paid to Maha-Metro on yearly basis and shall be paid in advance by the last working day of the previous running year.

This has also been illustrated below for better understanding of licensee –

The Billing period	-	1st April – 31 st March
Period for the issue of Demand Note	-	1st March - 15th March
Last Date of payment of Dues to Maha-Metro	-	31st March.

The license fee can be paid by Demand Draft/ Pay Order/NEFT/RTGS in favour of Maharashtra Metro Rail Corporation Ltd., payable at Nagpur. The designated account number for Maha-Metro and IFSC Code for crediting the License fees will be provided in the demand note generated.

- g. The payment of Annual Licensee fee shall be paid in accordance with the payment schedule as mentioned below –

Schedule of payment to be prepared and pasted.

- h. The Annual license fee shall be escalated by 20% on compounding basis after completion of every three (3) years.

4.1.3. Utility Area Charges

- a. Apart from the area mentioned, the additional area on terrace and the ground floor or elsewhere (to the extent available and provided subject to technical feasibility) for the installation of utilities and services such as water tanks, AC plants, Generators, etc. shall be charged additionally, on annual basis. The Licensee shall accept the area made available for utilities and services by the MAHA-METRO against written request from the Licensee. No part payment or instalments will be allowed in this regard.
- b. The area provided to licensee, for installation of utilities, shall be charged on yearly basis and shall be as follows –

Annual License Fees for Utility Area =	50% of Prevailing License Fee per Sqft. per month, computed after considering applicable escalation	*	Actual Utility area being handed over to Licensee for installation of utilities.	*	12 months
---	--	----------	---	----------	------------------

4.1.4. Common Area Maintenance

- a. The Licensee shall also be required to pay Common Area Maintenance Fees for the respective property Business spaces allotted to him. The fees for the initial three years from the date of handover shall be **Rs. 10 per Sqft per month**. For consequent License tenure, the common area maintenance fees shall be in accordance with the timely revision made by by Maha-Metro in this regards.

4.1.5. Other Conditions

- a. In case of extension of the Commencement Date or Moratorium Period or both, as the case may be, for whatsoever reason, the escalation on the License Fee and maintenance fee shall be counted from the commencement date.
- b. The account shall be reconciled by Maha-Metro on annual basis.
- c. The Licensee agrees voluntarily and unequivocally to make all payments to Maha-Metro as may be due before the due date, without waiting for any formal advice from Maha-Metro. In the events of non-receipt of any invoice, the Licensee agrees to collect the same from the office of authorized representative of the Licensor.
- d. Licensee shall periodically advise the details of payment deposited with Maha-Metro. In the case of non-submission of such details, initially Third Party dues i.e. statutory dues/ liabilities shall be settled (mandatory liabilities of Maha-Metro), then others dues/ liabilities like electricity, etc. and lastly the Annual License fee shall be accounted for.
- e. If the Licensee fails to pay or partly pay the Annual license fee and/or any other dues required to be paid as per terms and condition of License Agreement by the due date, a 15 (Fifteen) days Cure Notice shall be issued to pay the outstanding Annual license fees and/or other dues along with an interest of 15% (Fifteen percent) per annum on the outstanding dues after the due date and falling in arrears. Interest shall continue to be accrued on monthly compounding basis until all the payable amount of Annual License Fees and/or other dues are finally squared up. Such interest shall be charged on outstanding dues for the actual day(s) of delay in payment.
 - i. In the event of the Licensee failing to deposit the outstanding License Fee and other dues within the 15 (fifteen) days' cure notice, Maha-Metro shall issue a termination notice to make payment of outstanding License Fee and other dues within next 30 (thirty) days.
 - ii. In the event of Licensee failing to deposit the outstanding License Fee and other dues within fifteen (15) days from the date of issue of 30 (thirty) days termination notice, on 16th day of issuance of aforesaid termination letter, Maha-Metro shall disconnect all utilities provided to the Licensee.
 - iii. In the event of Licensee failing to deposit the dues within thirty (30) days from the date of issue of termination notice, it shall constitute Material Breach of Contract and Licensee's Event of Default under this Agreement and shall entitle Maha-Metro to encash the Security Deposit/Performance Security and terminate the License Agreement as per provisions stipulated in Chapter-15 of the License Agreement.
- f. In the event of default of Licensee in making payments of License fees, maintenance charges (as applicable), charges for electric supply, air conditioning charges, taxes or any other dues towards MAHA-METRO in prescribed time, MAHA-METRO shall be entitled to discontinue / disconnect the service of electricity /air conditioning / water / sewer etc in licensed premises and debar the Licensee from availing use of common areas / facilities (viz., use of stair case / lifts, etc). Apart from the said rights as stated, MAHA-METRO shall also have the rights including but not limited to restrict the access of Licensee in licensed premises and recover all dues along with interest

- g. In case Licensee makes default in payment of License Fees 3 (three) times during the entire License Period, the agreement shall be liable for termination by the Authority.
- h. Other charges as applicable and detailed in the License agreement will have to be borne by the Licensee
- i. All payments of License Fees be made by Licensee through online payment gateway mode, Demand draft and Cheques in the Bank Account of the Authority. The information of E-Payment Gateway available on E-Tendering Website <https://mahametrorail.etenders.in>.

4.2. Taxes and Penalties

- 4.2.1. All other statutory taxes, statutory dues, local levies, third party dues (i.e. electricity, water consumption charges etc.) as applicable shall be charged extra and shall have to be remitted along with the license fees for onward remittance to the respective Government agencies.
- 4.2.2. The successful bidder shall indemnify Maha-Metro from any claims that may arise from the statutory authorities in connection with this tender document / license agreement. Any change in Tax structure or Govt. guidelines will be imposed on the property business space separately.
- 4.2.3. In the event of termination of the license agreement before the completion of the Lockin period, the License Fees and any other payment along with Performance Security and Security Deposit as the case may be submitted to the Authority till date shall be forfeited and the Licensee shall be blacklisted.

4.3. Charges for Electricity and Water

The water and electric meter/sub-meter shall be installed at the licensee's premises for calculating the consumption of water and electricity. The charges for the electricity and water shall be recovered from Licensee on actual consumption basis, as per the applicable commercial rates charged by the respective authorities.

ARTICLE 5 OBLIGATIONS OF THE Licensee

5.1. Obligations of the Licensee

- 5.1.1. The Licensee's Responsibilities and Duties shall include the following, in addition to and without prejudice to other obligations under this Agreement:
- a. to obtain due permits, necessary approvals, clearances and sanctions from Maha-Metro and all other competent authorities for all activities or infrastructure facilities including interior decoration, power, water supply, drainage & sewerage, telecommunication, etc.;
 - b. to comply and observe at all times with all Applicable Permits, approvals and Applicable Laws in the performance of its obligations under this Agreement including those being performed by any of its contractors;
 - c. to develop, operate and maintain the Licensed Area at all times in conformity with this Agreement;
 - d. to furnish Maha-Metro with the "As built" Drawings of the Licensed Space(s) within the Moratorium Period;
 - e. to ensure that no structural damage is caused to the existing buildings and other permanent structures at the station as a result of his activities or any of its agents, contractors etc.;
 - f. to take all reasonable steps to protect the environment (both on and off the property business space) and to limit damage and nuisance to people and property resulting from construction and operations, within guidelines specified as per Applicable Laws and Applicable Permits;
 - g. to duly supervise, monitor and control the activities of contractors, agents, etc., if any, under their respective License Agreements as may be necessary;
 - h. to take all responsible precautions for the prevention of accidents on or about the property business space and provide all reasonable assistance and emergency medical aid to accident victims;
 - i. not to permit any person, claiming through or under the Licensee, to create or place any encumbrance or security interest over whole or any part of the Licensed premises and/or other installed assets, or on any rights of the Licensee therein or under this Agreement, save and except as expressly permitted in this Agreement;
 - j. to keep the Licensed Space free from all unnecessary obstruction during execution of works and store the equipment or surplus materials, dispose of such equipment or surplus materials in a manner that causes least inconvenience to the Metro Station, metro commuters or Maha-Metro's activities.
 - k. at all times, to afford access to the Licensed Property Business Space to the authorised representatives of Maha-Metro, other persons duly authorised by any Governmental Agency having jurisdiction over the business of Licensed Property Business Space, to inspect the Licensed Property Business Space and to investigate any matter within their authority and upon reasonable notice; and

- l. use non-combustable material in the allotted space for creation/erection/installation of any kind of furniture, fixtures and or partitions within the space. Use of combustible material within the property business space shall not be permitted under any circumstances.
 - m. to comply with the divestment requirements and hand over the Licensed Property Business Space to Maha-Metro upon Termination of the Agreement;
- 5.1.2. The Licensee shall be solely and primarily responsible to Maha-Metro for observance of all the provisions of this License Agreement on behalf of its employees and representatives and agents and any person acting under or for and on behalf of the Licensee, contractor (s) appointed for the Licensed Space as fully as if they were the acts or defaults of the Licensee, its agents or employees.
- 5.1.3. Sub- Licensing: Licensee shall not be entitled to sub-license the licensed space allotted to him.
- 5.1.4. Licensee shall at all times adhere to all provisions of the Metro Railway (Operation And Maintenance) Act, 2002 and amendments thereto and shall also comply with all notices and circulars issued by Maha-Metro in this regard.
- 5.1.5. No tenancy/sub-tenancy is being created by Maha-Metro in favour of Licensee under or in pursuance of this Agreement and it is distinctly & clearly understood, agreed and declared by/ between the parties hereto that:
- a. The Licensee shall not have or claim any interest in the said licensed space as a tenant/sub-tenant or otherwise.
 - b. The rights, which Licensee shall have in relation to the said licensed space, are only those set out in this Agreement.
 - c. The relationship between Maha-Metro and Licensee under and/or in pursuance of this Agreement is as between Principal and Principal. Consequently, neither party shall be entitled to represent the other and/or make any commitment on behalf of and/or with traders or any other party. Furthermore, no relationship in the nature of Principal Agent or Partnership or Association of persons is hereby being created or intended to be created between Maha-Metro on the one hand and Licensee on the other hand in connection with and/or relating business to be operated by Licensee at the said premises.

5.2. Employment of trained personnel

- a. The Licensee shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.
- b. The Licensee shall also ensure that the persons employed for work are above 18 years of age, and no child labour is being engaged for the work.

5.3. Authorised Representative and Project Manager

- 5.3.1. The Licensee shall, within 30 (thirty) days from the Effective Date, nominate its Authorised Representative and shall authorise him for all correspondence, communication, signing of documents, participation in meetings etc. with Authority in respect of the Property Business Space and issues relating to or arising out of the Agreement.
- 5.3.2. The Licensee shall at all times, take all reasonable precautions to prevent any unlawful, riotous, or disorderly conduct, by or amongst, his staff and labour, and to preserve peace and protection of persons and property in the neighbourhood of the Project, against such conduct. The Licensee alongwith his Contractors (if any) shall disclose a list of all their employees and workmen, who are involved in the operation and maintenance of the project. The Licensee shall ensure that under no circumstances, the employees and workmen of the Licensee or any Contractor, are otherwise deemed to be employees of Authority.

5.4. Obligation with respect to Taxes, duties

- 5.4.1. The Licensee shall be solely responsible to pay all other statutory taxes, statutory dues, local levies, Property tax (proportionate to the Property Business space) as applicable on the agreement. The said taxes and all other third party dues (i.e. electricity, water consumption charges etc.) as applicable shall be charged extra and shall have to be remitted along with the license fees for onward remittance to the Government. The successful bidder shall indemnify Maha-Metro from any claims that may arise from the statutory authorities in connection with this tender document / license agreement. Any change in Tax structure like introduction of GST as per Govt. guidelines will also be applicable.
- 5.4.2. Any new levies, taxes, cess etc. if any, imposed by Government Authorities on Maha-Metro for awarding the contract shall be recovered from the Bidder separately by Maha-Metro. However it is to be noted that Income tax if any which is imposed on Maha-Metro shall be borne by Maha-Metro only.
- 5.4.3. Payment of stamp duty on execution & registration of license agreement, if any, to be executed in pursuance of this bid shall be solely borne by successful bidder.
- 5.4.4. If the Licensee fails to pay any Taxes, charges, outgoing payments etc., which expenses he is required to bear, and the same are instead paid by the Authority, then Authority shall be entitled, to be reimbursed for such amounts by the Licensee along with interest at a rate of 15% (Fifteen percent) per annum. In addition the Licensee shall pay as damages to the Authority 25% (Twenty Five Percent) of the sum total of amount paid by Authority and interest payable to Authority.

5.5. Approvals & Licences for the Project

- 5.5.1. The Licensee shall observe and conform to all Applicable Laws relating to the Property Business Space, the Property Business Space in any way and in particular but not limited to all public and labour related issues including health and sanitation in force for the time being.

The Licensee shall ensure and shall remain responsible that its Contractors and End Users shall also adhere with Applicable Laws as required in the Agreement.

5.5.2. The Licensee shall at all times, obtain and keep valid all Applicable Permits, which are required by Applicable Law, to undertake the Project/Property Business Space.

5.5.3. Without prejudice to the foregoing:

- i. The Licensee and its Contractors shall be responsible to ensure compliance with the provision of the Minimum Wages Act, 1948 and the Rules made thereunder.
- ii. The Licensee and its Contractors shall be responsible to ensure compliance with the provisions of the Apprentice Act, 1961 and the Rules and orders issued thereunder from time to time in respect of apprentices.
- iii. The Licensee and its Sub-Contractors shall comply with the provisions of the Payment of Wages Act, 1936 and the rules thereunder.
- iv. The Licensee shall comply with the provision of the Contract Labour (Regulation and Abolition) Act, 1970 and the Contract Labour (Regulation and Abolition) Central Rules 1971 as modified from time to time, where ever applicable.
- v. The Licensee shall be responsible for the safety of all employees directly or through Contractor employed by it on the Project and shall report serious accidents to any of them however and wherever occurring on the Licensed premises to the Authority Representative or the Authority Representative's Representative and shall make every arrangement to render all possible assistance.
- vi. The Licensee shall observe and make its Contractors observe and perform all the provisions of the Mines Act, 1952 or any statutory modifications or re-enactments thereof for the time being in force and any rule and regulations made thereunder.
- vii. For the purposes of all Applicable Laws, the Licensee shall be deemed to be the principal employer of all workers working at the Licensed premises. The Licensee shall indemnify Authority from and against any Liabilities under any of the Acts or Rules thereunder mentioned in this Article or any other Applicable Laws, and in case through order of any Government Authority, Authority or the Railway has to pay any compensation in respect of the Licensed premises, Authority shall recover such amount of compensation so paid from the Security Deposit or the Escrow Account or otherwise from the Licensee under these conditions.

ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

6.1. Obligations of the Authority

- 6.1.1. The Authority shall, at its own cost and expenses undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2. The Authority agrees to provide the support to the Licensee and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) grant the Licensee the right of way to the respective property business space where the Licensee is selected as Highest Bidder.
 - (b) ensure that no barriers are erected or placed on or about the property business space by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;
 - (c) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
 - (d) support, cooperate with and facilitate the Licensee in the usage, operation and maintenance of the property business space allotted in accordance with the provisions of this Agreement;

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1. Representations and warranties of the Licensee

The Licensee represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the said property business space in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising there under including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (h) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (i) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (j) all its rights and interests in the property business space shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Licensed premises Assets shall be acquired by it, subject to any agreement under which a security interest or other lien

or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

- (k) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the License or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (l) all information provided by the selected bidder in response to the Request for Proposal or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

7.2. Representations and warranties of the Authority

The Authority represents and warrants to the Licensee that:

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

7.3. Disclosure

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

ARTICLE 8 DISCLAIMER

8.1. Disclaimer

- 8.1.1. The Licensee acknowledges that prior to the execution of this Agreement, the Licensee has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Licensed premises, Specifications and Standards, built-up space, existing structures, local conditions, traffic volumes 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 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 Licensee confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2. Licensee acknowledges that prior to execution of this Agreement, they have extensively studied and analysed and satisfied itself about all the requirement of this License Agreement including but not limited to market and market conditions.
- 8.1.3. Licensee acknowledges that prior to execution of this Agreement, they have carefully assessed of intended earnings from said business and that they will be fully responsible for all its assessment in this regard.
- 8.1.4. Licensee confirms having seen / visited / assessed the intent of this License Agreement and fully understands and comprehends the technical, financial, commercial and investment requirements.
- 8.1.5. Licensee also confirms that it has fully analyzed to their fullest satisfaction, business viability of the Licensee and hereby voluntarily and unequivocally agrees not to seek any claim, damages, compensation or any other consideration, whatsoever on this account.
- 8.1.6. Licensee hereby undertakes that as on date
- viii. Maha-Metro/MOUD/Govt. of Maharashtra has not banned business with the Licensee or Any Central/State Government Department/PSU/Other Government entity or local body has not have banned business with the licensee which is applicable to all ministries (approved by the Committee of Economic Secretaries, Ministry of Commerce).
- 8.1.7. The Lincesees acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Licensee or any person claiming through.

ARTICLE 9 SECURITY DEPOSIT

9.1. Security Deposit

9.1.1. The Licensee shall, for the performance of its obligations hereunder during the entire License Period, provide to the Authority within 30 Days of Letter of Acceptance, a Security Deposit.

9.1.2. The Security Deposit Amount for each property business space shall be as follows –

Sr. No.	Station Name	Property Business Space Number	Area	Security Deposit
			(In Sq. Mts.)	(Amount In Rupees)
1	Khapri Metro Station	KRI/PD-01	237.11	Amount equivalent to 1st Year of annual license fees for each Property Business Space.
2	Khapri Metro Station	KRI/PD-04	237.11	
3	New-Airport Station	NAPT/PD-01	119.7	
4	Airport Metro Station	APOT/PD-01 & G-02	445.06	
5	Airport Metro Station	APOT/PD-05	126.88	
6	Airport Metro Station	APOT/PD-06 & G-03	713.7	
7	Jaiprakash Nagar Metro Station	JIN/PD	291.83	
8	Jaiprakash Nagar Metro Station	JIN/PD-01	105.24	
9	Jaiprakash Nagar Metro Station	JIN/PD-02	106.76	
10	Jaiprakash Nagar Metro Station	JIN/PD-05	1099.13	
11	Jaiprakash Nagar Metro Station	JIN/PD-06	313.85	
12	Jaiprakash Nagar Metro Station	JIN/PD-07	812.81	

9.1.3. The Security Deposit shall be submitted in the form of Cash/Demand Draft/Account Payee Cheque/NEFT/RTGS and shall be retained by authority for the entire license period. The EMD/ Bid Security already submitted with bid shall be adjusted with the Security Deposit, in case of successful bidder, balance amount shall be paid by Successful bidder to “Maharashtra Metro Rail Corporation Limited”

9.1.4. The Security Deposit shall be with Authority for the entire License Period and shall be treated as “Interest Free deposits”.

9.1.5. The Interest Free Security Deposit for the Property Business Spaces shall be equal to 100% of first year lease rental and renewed every three years for similar amount after incorporating escalation.

The interest free security deposit is proposed to be recovered in manner as follows –

- Up to Rs. 10 Lakhs in the form of DD/PO/ Online Account transfer.
- For mount more than Rs. 10 Lakhs, first Rs. 10 Lakhs in the form of DD/PO/ Online Account transfer; amount exceeding Rs. 10 Lakhs, minimum 50% in the form of DD/PO/ Online Account transfer (subject to maximum of Rs. 50.00 Lakhs) & balance amount in the form of Bank Guarantee.

9.1.6. The Interest Free Security Deposit shall be escalated by 20% on compounding basis after completion of every three (3) year.

- 9.1.7. It is to be noted that the Bid Security shall be adjusted in the Security Deposit only when the other conditions precedents for signing of License Agreement are fulfilled by the Successful/Selected Bidder.
- 9.1.8. The Authority shall encash/adjust the Security Deposit against penalties as levied upon the Licensee during the entire License period.

9.2. Appropriation of Security Deposit

Upon occurrence of a Licensee's Default, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Security Deposit as Damages for such Licensee Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Security Deposit, the Licensee shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Security Deposit, and in case of appropriation of the entire Security Deposit provide a fresh Security Deposit, as the case may be, and the Licensee shall, within the time so granted, replenish or furnish fresh Security Deposit as aforesaid failing which the Authority shall be entitled to terminate this Agreement. Upon replenishment or furnishing of a fresh Security Deposit, as the case may be, as aforesaid, the Licensee shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Licensee Default, and in the event of the Licensee not curing its default within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 15.

9.3. Release of Security Deposit

The Security Deposit amounting to Rs./- (Rupees Lakhs) shall remain in force and effect for the entire License period. This Security Deposit shall be released upon Completion of entire License period and/or the termination (payable only in the event of non-Licensee default) date whichever is earlier. The Security Deposit shall be released subject to Authority's right to receive or recover amounts if any due from Licensee under this Agreement. No interest shall be paid on the Security Deposit.

ARTICLE 10 ENTRY TO COMMERCIAL SERVICE

10.1. Effective Date

The Effective Date shall mean the date of signing of License Agreement or the date of handing over of possession or date mentioned in letter or notice for taking over possession of licensed space(s), whichever is earlier.

10.2. Commercial Operation Date (COD)

The Commercial Operation Date (COD) shall mean the immediate date upon completion of moratorium period or commercial operation date of the station, whichever is later.

10.3. Fitment period

For carrying out the fit-outs, finishing works etc., successful bidder would be permitted with fitment period which is as follows -

- Built Up Area > 100 Sqm but < 500 Sqm - **90 days**
- Built Up Area > 500 Sqm but < 1000 Sqm - **120 days**
- Built Up Area > 1000 Sqm - **180 days**

The fitment period shall commence from the date of handing over of business space to licensee. The successful bidder shall have to complete in all respects the development of the tendered / licensed space, within the allowed fitment period. The agreement shall be valid for a period of 30 years from the date of handover of property business space, irrespective of extension of fitment period by Maha-Metro.

10.4. Moratorium Period

For carrying out the fit-outs, finishing works etc., successful bidder would be permitted to have a rent free moratorium period. The moratorium period shall be as follows –

- Built Up Area > 100 Sqm but < 500 Sqm - **90 days**
- Built Up Area > 500 Sqm but < 1000 Sqm - **120 days**
- Built Up Area > 1000 Sqm - **180 days**

The moratorium period shall commence from the date of handing over of business space to licensee. The license fee shall commence immediately after expiry of applicable rent-free moratorium period. The escalation on License Fees shall be counted from the commencement date of License tenure.

ARTICLE 11 OPERATION AND MAINTENANCE

11.1. O&M obligations of the Licensee

11.1.1. During the Operation Period, the Licensee shall operate and maintain the premises in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the premises to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Licensee hereunder shall include:

- (a) permitting safe, smooth and uninterrupted flow of visitors on the premises during normal operating conditions;
- (b) undertaking routine maintenance including prompt repairs;
- (c) undertaking routine maintenance of equipment if any;
- (d) preventing, with the assistance of concerned law enforcement agencies, any unauthorised use of the premises;
- (e) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the premises;
- (f) protection of the environment and provision of equipment and materials therefore;
- (g) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Licensed premises;
- (h) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and
- (i) complying with Safety Requirements in accordance with Article 18.

11.1.2. Permissible Usage of Space: Commercial Spaces can be put for any activity except banned list of usages as given in Annexure-II.

11.1.3. Licensee shall keep and maintain the Licensed Space in neat & clean, safe & sound condition by maintaining it properly at their own cost during the License Period. Licensee shall bear the cost of minor day-to-day repairs, annual refurbishing and routine special repairs required due to normal wear & tear with the efflux of time or due to planning/ constructional defects remained during augmentation of the Licensed Space. Any defective, weak or corroded structure should be replaced immediately with new proper structure after due certification from reputed agency.

11.1.4. Licensee shall ensure that all electrical wiring, power outlets and gadgets used are maintained properly, guarded against short circuits / fires. The instructions of Maha-Metro's electrical inspectors/ authorized representative shall be complied by the licensee at its own cost.

11.1.5. Licensee shall ensure that fire detection and suppression measures installed inside their premises are kept in good working condition at all times. The Fire extinguishers must be regularly checked & refilled and must be visible & easily accessible at all times of emergency. The Licensee's staff must be capable of addressing the safety issues during any emergency including operation of fire extinguisher.

- 11.1.6. In case of accident caused due to negligence of the Licensee resulting into injury/ death to Maha-Metro employees/ other users/ any person or loss to Maha-Metro property, Licensee shall compensate the loss(es), without prejudice to other actions under this Agreement at the sole discretion of Maha-Metro, including termination of Agreement.
- 11.1.7. The Licensee voluntarily and unequivocally agrees not to seek any claims, damages, compensation or any other consideration whatsoever because of implementing the instruction issued by Maha-Metro fire officer, electrical inspector, Security officer or their authorized representatives from time to time.
- 11.1.8. The overall control and supervision of the premises shall remain vested with Maha-Metro who shall have right to inspect the whole or part of the licensed spaces as and when considered necessary, with respect to its bonafide use and in connection with fulfillment of the other terms and conditions of the license agreement.
- 11.1.9. The Licensee voluntarily and unequivocally agrees to provide un-fettered access to the fire officer & other officials of Maha-Metro for inspection of Licensed Space or for repair of Maha-Metro utilities passing through the Licensed Space at any time and to abide by and comply with all instructions as may be indicated by the fire officer & other officials. If any fixtures or utility relating to operation of the MRTS (Metro) is running through the licensed area, proper protection as advised by Maha-Metro shall be done by Licensee.
- 11.1.10. Licensee and its employees or other persons involved in the execution of the work shall not, in any way, impinge on the safety and security of metro operations, passenger safety, safety of metro properties and its assets.
- 11.1.11. The Licensee and their authorized representatives shall have free access to the licensed spaces at all the times. The necessary identity cards to such person(s) shall be issued by Maha-Metro in accordance with its extant policy. However, entry into paid area or travelling by Metro trains shall be as per general policy to Maha-Metro commuters.
- 11.1.12. Encroachment: The Licensee shall not encroach upon common areas/circulating areas or any other space, and restrict their operation to within the area licensed. In case, the Licensee encroaches upon the common area, circulating area or any other space then a fine/ compensation @ Rs.1000/- on the first occasion, Rs.2,000/- on the second occasion and Rs.3,000/- after second occasion shall be imposed by Maha-Metro. Thereafter Maha-Metro reserves the right to revoke the license for breach of contract.
- 11.1.13. Further, Maha-Metro can impose the fine on Licensee up to Rs.5,000/- per offence per week on the following offenses:
- i. Any staff of Licensee found in drunken condition/ indulging in bad conduct.
 - ii. Any staff of the Licensee found creating nuisance.
 - iii. Improper maintenance & defacement of the Metro Property.
 - iv. Dishonor of drafts and Cheques given by Licensee in favour of Maha-Metro.
 - v. Misbehavior with staff and commuters of Maha-Metro.
 - vi. Not following safety and security norms as may be indicated by authorized representative of Maha-Metro.

vii. Any staff of the Licensee found without uniform and ID Card and/or found creating nuisance on duty.

viii. Not following the instructions issued by Maha-Metro authorities from time to time

11.1.14. The option to impose fine, penalty, etc. under this License Agreement shall be exercised by Maha-Metro official not below the rank of Deputy General Manager (DGM).

11.1.15. It shall be sole responsibility of the Licensee to maintain law and order in its licensed premises. Maha-Metro shall, in no way, will be responsible/accountable of any mis-happenings in the premises given on license basis to the Licensee.

11.2. Maintenance Requirements

11.2.1. The Licensee shall at all times during the Operation Period of the Licensed premises conforms to the maintenance requirements. The Licensee shall repair or rectify any defect or deficiency occurred during Operation & Maintenance of the Licensed premises. The obligations of the Licensee in respect of maintenance requirements shall include repair and rectification of the defects and deficiencies occurred during operation of the Licensed premises.

11.3. Safety, breakdowns and accidents

11.3.1. The Licensee shall ensure safe conditions within the premises and surrounding areas, and in the event of unsafe conditions, breakdowns and accidents, it shall follow the relevant operating procedures. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits and Good Industry Practice.

11.4. De-commissioning due to Emergency

11.4.1. If in the reasonable opinion of the Licensee, there exists an Emergency which warrants de-commissioning and closure of the whole or any part of the property business space/ premises, the Licensee shall be entitled to de-commission and close the whole or any part of the property business space allotted to him so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Licensee to the Authority without any delay, and the Licensee shall diligently carry out and abide by any reasonable directions that the Authority may give for dealing with such Emergency.

11.4.2. The Licensee shall re-commission the operations and mainatenace of the premises or the affected part thereof as quickly as possible after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Licensee to re-commission the property business space /premises. However the recommissioning of the space be done only after the written approval of Maha-Metro.

11.5. Authority's right to take remedial measures

11.5.1. In the event the Licensee does not maintain and/or repair the Licensed premises and such breach is causing or likely to cause the safety and security of a public at a large, the Authority

shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and cost of the Licensee, and to recover its cost from the Licensee. In addition to recovery of the aforesaid cost, a sum equal to 25% (twenty five percent) of such cost shall be paid by the Licensee to the Authority as Damages.

- 11.5.2. The Authority shall have the right, and the Licensee hereby expressly grants to the Authority the right, to recover the costs and Damages specified in Clause 11.5.1 above .

11.6. Overriding powers of the Authority

- 11.6.1. If in the reasonable opinion of the Authority, the Licensee is in material breach of its obligations under this Agreement and, in particular, the maintenance requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Licensee to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 11.6.2. In the event that the Licensee, upon notice under Clause 11.6.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exercise overriding powers under this Clause 11.6.2 and take over the performance of any or all the obligations of the Licensee to the extent deemed necessary by it for rectifying or removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred by the Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Licensee in accordance with the provisions of Clause 11.5 along with the Damages specified therein.
- 11.6.3. In the event of a national emergency, civil commotion or any other act specified in Clause 11.4, the Authority may take over the performance of any or all the obligations of the Licensee to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Licensed premises or give such directions to the Licensee as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 26. It is also agreed that the Licensee shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 11.6, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

11.7. Restoration of loss or damage to Licensed premises

- 11.7.1. Save and except as otherwise expressly provided in this Agreement, in the event that the property business space/premises or any part thereof suffers any loss or damage during the License Period from any cause whatsoever, the Licensee shall, at its cost and expense, rectify

and remedy such loss or damage forthwith so that the builtup area /premises allotted conforms to the provisions of this Agreement.

DRAFT

ARTICLE 12 INDEMNITY AND INSURANCE

12.1. Insurance

12.1.1. The Licensee shall, at its cost and expense, purchase and maintain during the License Period insurance to cover against:

- a. Loss, damage or destruction of the Licensed Area, at replacement value;
- b. The Licensee's general liability arising out of this Agreement;
- c. Liability to third parties;
- d. The risks that may devolve on Maha-Metro as a consequence of any act of negligence or omission by the Licensee or its employees, agents, contractors etc.; and

Any other insurance that may be necessary under and in accordance with the financing documents, Applicable Laws to protect the Licensee and its employees, including all Force Majeure Events that are insurable, and not otherwise covered in items above.

12.1.2. The aggregate of the maximum sums insured under the insurance taken out by the Licensee pursuant to this Article 12 are herein referred to as the "Insurance Cover".

12.1.3. The Licensee shall, immediately upon obtaining any insurance policy as per the requirement of this Agreement, provide to Maha-Metro copies or appropriate endorsements, certifications or other satisfactory evidence of insurance including copies of all premium payment receipts or renewals of all such insurance policies.

12.1.4. Such insurance shall not be cancelled, changed or terminated until the expiration of at least 45 (forty five) days after written notice of such cancellation, change or Termination has been given to Maha-Metro in writing. If at any point of time the Licensee fails to maintain in force and effect any or all of the insurance policies required under this Agreement, Maha-Metro may, at its option, purchase and maintain such insurance at the cost and expense of the Licensee. All sums incurred by Maha-Metro thereon shall be reimbursed by the Licensee forthwith on demand, failing which the same shall be recovered by the Maha-Metro from the Security Deposit of the Licensee.

12.1.5. In the event of default i.e. failure of the Licensee to maintain the Insurance Cover, the Licensee agrees and undertakes to indemnify and hold the Maha-Metro harmless against any and all liabilities, losses, damages, claims, expenses suffered by the Maha-Metro.

12.2. Indemnity

12.2.1. The Licensee hereby undertakes to indemnify, defend, save and hold harmless the Licensor and its officers, servants, agents, (hereinafter referred to as the "Licensor's Indemnified Persons") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatsoever kind and nature, whether arising out of any breach by the Licensee of any of its obligations under this Agreement or any related agreement or Applicable Laws or from any negligence of the Licensee under contract or tort or on any other ground whatsoever.

- 12.2.2. The Licensee hereby undertakes to indemnify and hold Licensor Indemnified Persons harmless against all costs, damages, liabilities, expenses arising out of any third party claims, relating to non- completion of the Fit-Out Activities; quality of the Fit-out Activities, the activities related to development and operations of the Licensed Space(s).
- 12.2.3. The Licensee hereby undertakes to indemnify Licensor Indemnified Persons against all losses and claims in respect of death or injury to any person or loss or damage to any property which may arise out of or in consequence of the execution and completion of works and remedying defects therein and against all claims, proceedings, damages, costs charges and expenses whatsoever in respect thereof or in relation thereto.
- 12.2.4. The Licensee hereby indemnifies Licensor Indemnified Persons against any loss or damage to Project Site or otherwise for any act and omission of the Licensee including for breach of License Agreement or any Applicable Law by Licensee as the case may be.
- 12.2.5. The Licensee hereby undertakes that Licensor Indemnified Persons shall not be liable for or in respect of any damages or compensation payable to any workman or other person in the employment of Licensee or any of its contractors / sub contractors. The Licensee shall indemnify and keep indemnified Licensor Indemnified Persons against all such damages and compensation, all claims proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- 12.2.6. Survival on Termination
- The provisions of this Clause '12.2' shall survive Termination.

ARTICLE 13 MONITORING OF OPERATION AND MAINTENANCE

13.1. Reports of unusual occurrence

The Licensee shall, prior to the close of each day, send to the Authority, by facsimile or e-mail, a report stating accidents and unusual occurrences on the premises relating to the safety and security of the users/commuters and the Nagpur Metro Rail Project. For the purposes of this Clause, accidents and unusual occurrences on the Licensed premises shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged of equipment;
- (c) any obstruction on the premises, which results in slow down of the services being provided by the Licensee or which may result in slowdown of the services provided by the Authority;
- (d) communication failure affecting the operation of premises;
- (e) smoke or fire;
- (f) flooding of Licensed premises; and
- (g) such other relevant information as may be required by the Authority.

ARTICLE 14 FORCE MAJEURE

14.1. Force Majeure

14.1.1. Neither Maha-Metro nor Licensee shall be liable for any inability to fulfill their commitments and obligations hereunder occasioned in whole or in part by Force Majeure, any of the following events resulting in material adverse effect, shall constitute force majeure events:

- e. Earthquake, Flood, Inundation, Landslide.
- f. Storm, Tempest, Hurricane, Cyclone, Lighting, Thunder or other extreme atmospheric disturbances.
- g. Fire caused by reasons not attributable to the Licensee.
- h. Acts of terrorism
- i. War, hostilities (Whether war be declared or not), invasion, act of foreign enemy, rebellion, riots, weapon conflict or military action or civil war.
- j. Strikes or boycotts, other than those involving the Licensor/ Licensee, its contractors, or their employees, agents etc.
- k. Any other similar act / things beyond the control of the Parties; and
- l. any judgment or order of any court of competent jurisdiction or local body made against the Licensee in any proceedings for reasons other than (i) failure of the Licensee to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Maha-Metro;

14.2. Notice of Force Majeure Event

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

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

14.3. Performance of Obligations

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

- a. Due notice of the Force Majeure Event has been given to the other party as required by the preceding Clause 14.2;
- b. The excuse from performance shall be of no greater scope and of no longer duration than is necessitated by the Force Majeure Event;
- c. There shall be no Termination of this Agreement due to Force Majeure Event except as provided in Clause 14.4;
- d. Where the Licensee is the Affected Party, the various deadlines set forth in this Agreement and the License Period shall be extended by the period for which such Force Majeure Event shall subsist.
- e. Where the Licensee is the Affected Party, it has taken all reasonable efforts to avoid, prevent, mitigate and limit damage, if any, caused or is likely to be caused to the facilities in the Licensed Space(s) as a result of the Force Majeure Event and to restore the facilities in the Licensed Space(s) , in accordance with the Good Industry Practice and its relative obligations under this Agreement;
- f. When the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party written notice to that effect and shall promptly resume performance of its obligations hereunder. The non issue of such notice being no excuse for any delay for resuming such performance;
- g. The Affected Party shall continue to perform such of its obligations which are not affected by the Force Majeure Event and which are capable of being performed in accordance with this Agreement; and
- h. Any proceeds of Insurance taken to safeguard force majeure events, received by the Licensee shall be entirely applied to repair, replace or restore the assets damaged on account of the Force Majeure Event, in accordance with Good Industry Practice, unless otherwise agreed to by Maha-Metro.

14.4. Termination due to a Force Majeure Event

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

ARTICLE 15 BREACHES/SURRENDER/TERMINATION OF LICENSE AGREEMENT

15.1. Surrender of License Agreement:

- 15.1.1. No partial surrender of licensed space or part of the licensed space which has been handed over to the Licensee by Maha-Metro shall be permissible during the tenure of the License Agreement.
- 15.1.2. The Licensee shall have option to surrender the license agreement after five (5) years lock-in period provided -
 - a. The Licensee successfully completes initial Five (5) years lock in period.
 - b. There is no arrear pending with the Licensee on the date of issue of surrender notice.
 - c. Maha-Metro receives a 180 days advance notice, in writing, from licensee for its intention to surrender the license agreement. Such notice of 180 days can be given as per the provisions of this license agreement.
 - d. Licensee continues to pay all dues as per schedule to Maha-Metro till the date of premature closure of License Agreement.
 - e. Licensee hand over peaceful possession of the all Licensed space to Maha-Metro free from all encumbrances within 30 (thirty) days from the termination of License agreement.

If Licensee satisfies the above said conditions, Maha-Metro shall terminate the Agreement and refund interest free Security Deposit/ Performance Security after adjusting any outstanding amount on the part of Licensee.

- 15.1.3. If the Licensee is desirous of terminating the license hereby created before expiry of the lock-in period of five (5) years, the License Agreement shall deemed to be terminated on the date mentioned in termination/ surrender notice, subject to confirmation by Maha-Metro. In such a case, the balance Interest Free Security Deposit shall be forfeited in favour of Maha-Metro after adjustment of outstanding dues, if any, payable to Maha-Metro. No grace period shall be provided to Licensee in such a case. Maha-Metro may also recover the balance outstanding dues, if they are more than Interest Free Security Deposit, from the other contracts of Licensee in Maha-Metro. Balance outstanding dues, if are more than Interest Free Security Deposit, shall also be recoverable from the Licensee before Licensee is permitted to remove their establishment(s) or else Maha-Metro will seize their property at nil/ zero value. Maha-Metro shall be free to dispose-off the said property / goods in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages on this account.
- 15.1.4. There shall be a lock in period of five (5) years from the date of commencement of agreement. The Licensee shall have option to exit from the License Agreement immediately after completion of the lock in period. For it, the Licensee shall have to issue 180 days prior notice to Maha-Metro. Such prior notice intimation can be given after one and half (1 ½) years however option to exit will be available only after five (5) years. In this case, Security Deposit of the Licensee shall be refunded after adjusting the dues, if any, to be payable by Licensee. In this case, Security Deposit of the Licensee shall be refunded after adjusting the

dues, if any, to be payable by the Licensee. Maha-Metro may also recover the balance outstanding dues, if are more than Interest Free Security Deposit, from the other contracts of Licensee in Maha-Metro. Balance outstanding dues, if are more than Interest Free Security Deposit, shall also be recoverable from the Licensee before Licensee is permitted to remove their establishment(s) or else Maha-Metro will seize their property at nil / zero value. Maha-Metro shall be free to dispose-off the said property / goods in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages on this account.

- 15.1.5. If the Licensee is desirous of terminating the license after expiry of above said lock-in period without serving any prior intimation period or shorter intimation period than 180 days, the agreement shall deemed to be terminated on completion of such short / irregular intimation period. In such cases, the Interest Free Security Deposit shall be refunded to the Licensee after adjustment of license fee for period shorter than 180 days (notice period) and outstanding dues, if any. Maha-Metro may also recover the balance outstanding dues, if are more than Interest Free Security Deposit, from the other contracts of Licensee in Maha-Metro. Balance outstanding dues, if are more than Interest Free Security Deposit, shall also be recoverable from the licensee before Licensee is permitted to remove their establishment(s) or else Maha-Metro will seize their property at nil/ zero value. Maha-Metro shall be free to dispose-off the said property / goods in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages on this account.

15.2. Breach of License Agreement/ Licensee's Events of Default:

- 15.2.1. Following shall be considered as Material Breach of the License Agreement by Licensee resulting in Licensee's Events of Default:
- a. If the Licensee has failed to perform or discharge any of its obligations in accordance with the provisions of License Agreement, unless such event has occurred because of a Force Majeure Event, or due to reasons solely attributable to Maha-Metro without any contributory factor of the Licensee.
 - b. If the Licensee fails to pay Annual License Fee, utility charges, common area charges, penalty or Damage herein specified or any other due to be paid by the Licensee to Maha-Metro by the stipulated date.
 - c. If the Licensee during pendency of the License Agreement becomes insolvent or is put under receivership by a competent court.
 - d. If the Licensee is in persistent non-compliance of the written instructions of a Maha-Metro officials.
 - e. If the Licensee or any of its representatives cause an incident or accident that results in injury or death to Maha-Metro employees/ commuters or loss to Maha-Metro property.
 - f. If the Licensee is in violation of any of the other Clauses of License Agreement and after three written notice (unless otherwise specifically mentioned therein) from Maha-Metro fails to cure the Default to the satisfaction of Maha-Metro.

- g. If any representation made or warranties given by the Licensee under this Agreement is found to be false or misleading.
- h. If the Licensee engaging or knowingly has allowed any of its employees or agents to engage in any activity prohibited by law or which constitutes a breach of or an offence under any law, in the course of any activity undertaken pursuant to this Agreement.
- i. If the Licensee has created any encumbrance, charges or lien in favour of any person or agency, over the Licensed Space except expressly permitted under this Agreement.
- j. If a resolution for voluntary winding up has been passed by the shareholders of the Licensee.
- k. If any petition for winding up of the Licensee has been admitted and liquidator or provisional liquidator has been appointed or the Licensee has been ordered to wind up by Court of competent jurisdiction, except for the purpose of amalgamation or reconstruction with the prior consent of Maha-Metro, provided that, as part of such amalgamation or reconstruction and the amalgamated or reconstructed entity has unconditionally assumed all surviving obligations of the Licensee under this Agreement.
- l. If the Licensee has abandoned the Licensed Space.
- m. If the licensee violates banned usage as per list given in Annexure-II.
- n. If the licensee submitted false undertaking (as detailed on Clause No. 3.5 of Chapter-3) regarding not blacklisting / ban Licensee by Central/ State Government Department/ Public Sector Undertaking/ Other Government Entities or Local Body or termination of contract due to their nonperformance after award of contract during last five (5) years.

15.3. Termination of License Agreement by Maha-Metro:

- 15.3.1. Provided that in the event of application of clauses 15.2 (a) and (b) above, Maha-Metro shall give to the Licensee 30 days time to cure the default prior to considering the events specified therein as Licensee's events of default and in the event the Licensee remedies the default to the satisfaction of the Maha-Metro within the cure period, the event shall not be considered as a Licensee Event of Default. In case the licensee fails to remedy the default to the satisfaction of the Maha-Metro within the cure period, then Maha-Metro shall be within its rights to disconnect the utility services & terminate the License Agreement. The Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard.

15.4. On Operational Ground:

- 15.4.1. Maha-Metro reserves the right to terminate the License Agreement by giving three months advance notice on operational ground. The License agreement shall stand terminated after expiry of three months notice and the Security Deposit shall be refunded after adjusting outstanding dues, if any, payable by the Licensee. The Licensee voluntarily agrees not to seek any claim, compensation, damages or any other consideration whatsoever on any ground in this regard.

15.5. Termination for Force Majeure:

15.5.1. The License Agreement may be terminated for Force Majeure Reasons as specified in Article -14.

15.6. Other Terms & Conditions:

15.6.1. On termination of License Agreement:

- a. All third party agreements, entered by the Licensee with respect to the said property business space, shall stand terminated with immediate effect ;
- b. In case of termination of agreement on account of Licensee's Events of Default, the interest free Security Deposit and/or Performance Security shall be forfeited in favour of Maha-Metro. Any outstanding dues payable to Maha-Metro shall be adjusted/ recovered from the advance license fee and forfeited interest free Security Deposit. Balance outstanding dues, if remaining after adjustment of outstanding dues from the advance license fee and interest free Security Deposit, shall be recovered from the licensee.
- c. All utilities shall be disconnected with immediate effect, unless otherwise specified elsewhere, and

15.6.2. A notice of vacation shall be issued to the Licensee to vacate the premises within 30 days.

- i. On termination of the license agreement, the Licensee shall handover the vacant possession of premises to the Maha-Metro's authorized representative within 30 days from the date of termination of License Agreement, after removal of plants, equipments, furniture, fixtures, etc. installed by the Licensee at its own cost, without causing damage to Maha-Metro structures. The Licensee shall be allowed to remove their temporary structures, assets like furniture, almirahs, airconditioners, DG sets, equipments, etc without causing damage to the structure. However, the Licensee shall not be allowed to remove any facility, equipment, fixture, etc. which has become an integral part of the development plan of the space. The Licensee agrees voluntarily and un-equivocally not to seek any claim, damages, compensation or any other consideration whatsoever on this account. If the premise is not handed over in good condition as required under this clause, Maha-Metro reserves the right to deduct/ recover damage charges. No grace period shall be provided to licensee, if licensee terminates the contract within the lockin period.
- ii. If the Licensee fails to vacate the premises within the grace period of ninety (90) days, penalty of twice the prevalent monthly License Fee shall be chargeable for occupation for this thirty (30) days period. And, after lapse of this ninety (90) days grace period, Maha-Metro shall take over the goods / property treating at NIL/ Zero value, even if it is under lock & key; and shall be free to dispose-off the property in whatsoever manner as it deems fit. Licensee shall have no claim for compensation or consideration / damages after completion of grace period. If, licensee fails to pay the penalty, applicable in case of non-vacation of premises, the same shall be adjusted from the Interest Free Security Deposit / Performance Security available with Maha-Metro. No grace period shall be provided to licensee, if licensee terminates the contract within the lock-in period.

- iii. After vacating the premises, the Licensee shall submit a vacation certificate from the Maha-Metro's authorized representative as a proof of Licensee having vacated the site. Licensee's statement regarding vacation, without a vacation certificate from the Station in-charge or its authorized representative, shall not be accepted.
- iv. The termination of this Agreement shall not relieve either party from its obligation to pay any sums then owing to the other party nor from the obligation to perform or discharge any liability that had been incurred prior thereto. The Licensee shall be liable to pay all dues outstanding to Maha-Metro including electricity, chiller and other utility charges under this agreement without prejudice to rights and remedies applicable under the law. The final settlement of dues shall take place after submission of vacation certificate from the Depot in charge or his authorized representative subsequent to termination of License Agreement.
- v. Rights of Maha-Metro on Termination: Maha-Metro shall not have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or reemployment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the Licensed space.
- vi. On termination of Agreement, Maha-Metro shall have rights to re-market or to seal/ lock the Licensed Space.

15.7. Rights of Maha-Metro on Termination

- 15.7.1. Notwithstanding anything contained in this Agreement, Maha-Metro shall not, as a consequence of Termination or otherwise, have any obligation whatsoever including but not limited to obligations as to compensation for loss of employment, continuance or regularization of employment, absorption or re-employment on any ground, in relation to any person in the employment of or engaged by the Licensee in connection with the Licensed Space(s).
- 15.7.2. In cases of termination of License agreement due to default of Licensee, Maha-Metro shall have the exclusive rights to cut water supply, electricity, sewerage connection to the Licensed area and also start process for eviction of Licensee from Maha-Metro property.

15.8. Right to re-market the said Licensed Space(s) on Termination

- 15.8.1. Notwithstanding anything contained in this Agreement, Maha-Metro shall have right to remarket the Licensed Space(s) on Termination of this Agreement for any reasons whatsoever.

ARTICLE 16 DISPUTE RESOLUTION/ARBITRATION

16.1. Amicable Resolution

16.1.1. No legal action till Dispute Settlement Procedure is exhausted.

Any and all Disputes shall be settled in accordance with the provisions of Article 16. No action at law concerning or arising out of any Dispute shall be commenced unless and until all applicable Dispute resolution procedures set out in Article 16 shall have been finally exhausted in relation to that Dispute or any Dispute out of which that Dispute shall have arisen with which it may be or may have been connected.

16.1.2. Notice of Dispute

For the purpose of Sub-Clause 16.1.2, a Dispute shall be deemed to arise when one party serves on the other party a notice in writing (hereinafter called a "Notice of Dispute") stating the nature of the Dispute provided that no such notice shall be served later than 30 days after the date of takeover of the License Space by Maha-Metro.

16.1.3. Two Stages for Dispute Resolution

Disputes shall be settled through two stages:

- a) Conciliation procedures as established by "The Arbitration and Conciliation Act- 1996" & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof and in accordance with this Clause. In the event this procedure fails to resolve the Dispute then;
- b) Arbitration procedures undertaken as provided by "The Arbitration and Conciliation Act - 1996" & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof. and in accordance with this Clause.

16.1.4. Conciliation

Within 60 days of receipt of Notice of Dispute, either party shall refer the matter in dispute to conciliation.

Conciliation proceedings shall be initiated within 30 days of one party inviting the other in writing to Conciliation. Conciliation shall commence when the other party accepts in writing this invitation. If the invitation is not accepted then Conciliation shall not take place. If the party initiating conciliation does not receive a reply within 30 days from the date on which he sends the invitation he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

The Conciliation shall be undertaken by one Conciliator selected from a panel of Conciliators maintained by the Licensor. The Conciliator shall assist the parties to reach an amicable settlement in an independent and impartial manner.

16.1.5. Conciliation Procedure

The Employer shall maintain a panel of Conciliators, who shall be from serving or retired engineers of Government Departments, or of Public Sector Undertakings. Out of this panel, a list of three Conciliators shall be sent to the Licensee who shall choose one of them to act as Conciliator and conduct conciliation proceedings in accordance with "The Arbitration and Conciliation Act, 1996" of India & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof. There will be no objection if conciliator so nominated is a serving employee of Maha-Metro who would be Deputy HOD level officer and above. The Licensor and the Licensee shall in good faith co-operate with the Conciliator and, in particular, shall endeavor to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings. Each party may, on his own initiative or at the invitation of the Conciliator, submit to the Conciliator suggestions for the settlement of the dispute. When it appears to the Conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the Conciliator may reformulate the terms of a possible settlement in the light of such observations.

If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the Conciliator may draw up, or assist the parties in drawing up, the settlement agreement. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively. The Conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties. As far as possible, the conciliation proceedings should be completed within 60 days of the receipt of notice by the Conciliator.

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the conciliation proceedings.

16.1.6. Termination of Conciliation Proceedings

The conciliation proceedings shall be terminated:

- a) by the signing of the settlement agreement by the parties on the date of agreement; or
- b) by written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of such declaration; or

- c) by a written declaration of the parties to the conciliator to the effect that the conciliation proceedings are terminated, on the date of declaration; or
- d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of declaration.

Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties. The costs shall be borne equally by the parties unless settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

16.2. Arbitration

If the efforts to resolve all or any of the disputes through conciliation fails, then such disputes or differences, whatsoever arising between the parties, arising out of touching or relating to construction/ manufacture, measuring operation or effect of the License Agreement or the breach thereof shall be referred to Arbitration in accordance with the following provisions:

- a. Only such dispute(s) or difference(s) in respect of which notice has been made but could not be settled through Conciliation, together with counter claims or set off, given by the Licensor, shall be referred to arbitration. Other matters shall not be included in the reference.
- b. The Arbitration proceedings shall be assumed to have commenced from the day, a written and valid demand for arbitration is received by Managing Director, Maharashtra Metro Rail Corporation Limited, Nagpur (MD/Maha-Metro).
- c. The disputes so referred to arbitration shall be settled in accordance with the Indian Arbitration & Conciliation Act, 1996 & amended by the Arbitration & Conciliation (Amendment) Act, 2015 and any statutory modification or re-enactment thereof.

Further, it is agreed between the parties as under:

16.2.1. Number of Arbitrators: The arbitral tribunal shall consist of:

- i. Sole Arbitrator in cases where the total value of all claims in question added together does not exceed Rs. 2.00 crores;
- j. 3 (Three) arbitrators in all other cases.

16.2.2. Procedure for Appointment of Arbitrators: The arbitrators shall be appointed as per following procedure:

- i) In case of Sole Arbitrator: Within 60 days from the day when a written and valid demand for arbitration is received by MD/Maha-Metro, the Licensor will forward a panel of 03 names to the Contractor. The Licensee shall have to choose one Arbitrator from the panel of three, to be appointed as Sole Arbitrator within 30 days of dispatch of the request by the Licensor. In case the Licensee fails to choose one Arbitrator within 30 days of dispatch of panel of arbitrators by Maha-Metro then MD/Maha-Metro shall appoint anyone Arbitrator from the panel of 03 Arbitrator as sole Arbitrator.
- ii) In case of 3 Arbitrators:
 - a) Within 60 days from the day when a written and valid demand for Arbitration is received by MD/Maha-Metro, the Licensor will forward a panel of 5 names to the Licensee. The Licensee will then give his consent for any one name out of the panel to be appointed as one of the Arbitrators within 30 days of dispatch of the request by the Licensor.
 - b) Licensor will decide the second Arbitrator. MD/Maha-Metro shall appoint the two Arbitrators, including the name of one Arbitrator for whom consent was given by the Licensee, within 30 days from the receipt of the consent for one name of the Arbitrator from the Licensee. In case the Licensee fails to give his consent within 30 days of dispatch of the request of the Licensor then MD/Maha-Metro shall nominate both the Arbitrators from the panel.
 - c) The third Arbitrator shall be chosen by the two Arbitrators so appointed by the parties out of the panel of 05 Arbitrators provided to Licensee or from the larger panel of Arbitrators to be provided to them by Licensor at the request of two appointed Arbitrators (if so desired by them) and who shall act as Presiding Arbitrator. In case of failure of the two appointed Arbitrators to reach upon consensus within a period of 30 days from their appointment, then, upon the request of either or both parties, the Presiding Arbitrator shall be appointed by the Managing Director / Maha-Metro, Nagpur.
 - d) If one or more of the Arbitrators appointed as above refuses to act as Arbitrator, withdraws from his office as Arbitrator, or vacates his/their office/offices or is/are unable or unwilling to perform his functions as Arbitrator for any reason whatsoever or dies or in the opinion of the MD/Maha-Metro fails to act without undue delay, the MD/Maha-Metro shall appoint new Arbitrator /Arbitrators to act in his/their place except in case of new Presiding Arbitrator who shall be chosen following the same procedure as mentioned in para (ii)(c) above. Such re-constituted Tribunal may, at its discretion, proceed with the reference from the stage at which it was left by the previous Arbitrator(s).

- e) The Licensor at the time of offering the panel of Arbitrator(s) to be appointed as Arbitrator shall also supply the information with regard to the qualifications of the said Arbitrators nominated in the panel along with their professional experience, phone nos. and addresses to the Licensee.

16.2.3. Qualification and Experience of Arbitrators (to be appointed as per sub-clause 16.2.2 above)
: The Arbitrators to be appointed shall have minimum qualification and experience as under:

Arbitrator shall be;

a Working / Retired Officer (not below E-8 grade in a PSU with which Maha-Metro has no business relationship) of any discipline of Engineering or Accounts / Finance department, having experience in Contract Management;

or

a Retired Officer (retired not below the SAG level in Railways) of any Engineering Services of Indian Railways or Indian Railway Accounts Service, having experience in Contract Management; or a Retired Officer who should have retired more than 3 years previously from the date of appointment as Arbitrator (retired not below E-8 grade in Maha-Metro or a PSU with which Maha-Metro has a business relationship) of any Engineering discipline or Accounts / Finance department, having experience in Contract Management or retired judge of any High Court or Supreme Court of India or reputed Chartered Accountant & should be member of ICAI, New Delhi. No person other than the persons appointed as per above procedure and having above qualification and experience shall act as Arbitrator.

16.2.4. No new claim shall be added during proceedings by either party. However, a party may amend or supplement the original claim or defence thereof during the course of arbitration proceedings subject to acceptance by Tribunal having due regard to the delay in making it.

16.2.5. Neither party shall be limited in the proceedings before such arbitrator(s) to the evidence or arguments put before the Conciliator for the purpose of obtaining his decision. No decision given by the Conciliator in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator(s) on any matter, whatsoever, relevant to dispute or difference referred to arbitrator/s. Neither party shall be limited in the proceedings before such arbitrators to the evidence.

16.2.6. It is agreed by both the Parties that in the cases where Arbitral Tribunal is consist of sole Arbitrator, their disputes shall be resolved by fast track procedure specified in sub-section (3) of 29B of the Arbitration and Conciliation (Amendment) Act, 2015 or as amended up to date.

- 16.2.7. If the Licensee(s) does/do not prefer his/their specific and final claims in writing, within a period of 90 days of receiving the intimation from the Licensor/ Conciliator that the final demand is ready, he/they will be deemed to have waived his/their claim(s) and the Licensor shall be discharged and released of all liabilities under the License Agreement in respect of these claims.
- 16.2.8. Arbitration proceedings shall be held at Nagpur, India and the language of the arbitration proceedings and that of all documents and communications between the parties shall be in English.
- 16.2.9. The Arbitral Tribunal should record day to day proceedings. The proceedings shall normally be conducted on the basis of documents and written statements. All arbitration awards shall be in writing and shall state item wise, the sum and detailed reasons upon which it is based. A model Time Schedule for conduct of Arbitration proceedings in a period of 180 days / 365 days will be made available to Arbitral tribunal for their guidance. Both the Parties should endeavor to adhere to time schedule for early finalization of Award.
- 16.2.10. The award of the sole Arbitrator or the award by majority of three Arbitrators as the case may be shall be binding on all parties. Any ruling on award shall be made by a majority of members of Tribunal. In the absence of such a majority, the views of the Presiding Arbitrator shall prevail.
- 16.2.11. A party may apply for correction of any computational errors, any typographical or clerical errors or any other error of similar nature occurring in the award of a tribunal and interpretation of specific point of award to tribunal within 60 days of the receipt of award. party may apply to tribunal within 60 days of receipt of award to make an additional award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- 16.2.12. Interest on Arbitration Award
Where the arbitral award is for the payment of money, interest @ 15% per annum shall be payable on whole or any part of the money for the period it is accrued, till the date on which the award is made.
- 16.2.13. Cost of Conciliation / Arbitration
The fees and other charges of the Conciliator / Arbitrators shall be as per the scales fixed by the Licensor from time to time irrespective of the fact whether the Arbitrator(s) is / are appointed by the Licensor or by the Court of law unless specifically directed by Hon'ble Court otherwise on the matter, and shall be shared equally by the Licensor and the Licensee. However, the expenses incurred by each party in connection with the preparation, presentation will be borne by itself. The latest scale of fee & other charges fixed by Maha-Metro are as per Schedule-D enclosed.

16.2.14. Jurisdiction of Courts

Where recourse to a Court is to be made in respect of any matter, the court at Nagpur shall have the exclusive jurisdiction to try all disputes between the parties.

DRAFT

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

17.1. The Licensee represents and warrants to Maha-Metro that -

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

misleading;

- k. The Licensee 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 Maha-Metro shall not be liable for the same in any manner whatsoever to the Licensee.
- l. The Licensee shall make its own arrangements in engagement of its staff and labour and shall at no point represent to or claim that the staff, labour is being recruited for and on behalf of Maha-Metro. The Licensee shall at all times comply and represent to the staff and labour employed/ engaged by them the requirement for complying with Applicable Laws and applicable Permits, particularly in relation to safety and environmental regulations.

17.2. Obligation to notify change:

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

ARTICLE 18 MISCELLANEOUS

18.1. Interest and Right of Set Off

Any sum which becomes payable under any of the provisions of this Agreement by one Party to the other Party shall, if the same be not paid within the time allowed for payment thereof, shall be deemed to be a debt owed by the Party responsible for payment thereof to the Party entitled to receive the same. Such sum shall until payment thereof carry interest at the rate of 15% per annum from the due date for payment thereof until the same is paid to or otherwise realized by the Party entitled to the same. Without prejudice to any other right or remedy that may be available under this Agreement or otherwise under law, the Party entitled to receive such amount shall also have the right of set off. Provided that the stipulation regarding interest for delayed payments contained in this Clause 14.1 shall neither be deemed nor construed to authorize 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.

Governing Law and Jurisdiction

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

Waiver

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

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

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

Survival

Termination of this Agreement (a) shall not relieve the Licensee or Maha-Metro of any obligations already incurred hereunder which expressly or by implication survives

Termination hereof, and (b) except as otherwise provided in any provision of this Agreement

expressly limiting the liability of either Party, shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination

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.

No Partnership

Nothing contained in this Agreement shall be construed or interpreted as constituting a partnership between the Parties. Neither Party shall have any authority to bind the other in any manner whatsoever. Maha-Metro is also not a principal employer in regard to the activities of the Licensee.

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.

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.

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.

Employees of Licensee

The employees/ staff of the Licensee shall not be deemed or construed to be the employees of the Maha-Metro. The Licensee understands and undertakes that its employees/ staff shall

make no claim against the Maha-Metro for any reasons whatsoever. Further, the Licensee also agrees that the Maha-Metro shall not be liable for any accident/injury or claims of the workers/ employees during the execution of the developmental works under this Agreement and the Licensee hereby indemnifies and undertakes to keep Maha-Metro indemnified in respect of the same.

Encroachment

The Licensee shall have no exclusive rights for using the Common Areas and restrict its operation to within the Licensed Area. The Common Areas shall not be allowed to be encroached or used for any other purpose and any encroachment of Common Area shall be construed as breach of the License Agreement inviting action as applicable for breach of the License Agreement.

Registration of Agreement:-

The registration of License/lease agreements should be done within 30 days of signing of agreement, the licensee/ lessee (registration fees, stamp duty etc to be fully borne by the licensee/lessee) and the duly registered documents to be submitted to Maha-Metro for records. Any amendment in the contract agreement, if required to be registered, shall also be registered within 30 days from the date of amendment and duly registered documents shall be submitted to Maha-Metro for record.

In case the registration of the license/lease agreement /amendment is not done within the 30 days of signing of license/lease agreement/ amendment, it shall be treated as "Material Breach of Contract". The Licensee will be given 30 days time to cure the defaults In case Licensee fail to remedy the default to the satisfaction of the Maha-Metro within the cure period, Maha-Metro may terminate the License agreement after expiry of cure period duly forfeiting the security deposit/ any other amount paid by Licensee.

18.2. Miscellaneous

- 18.2.1. All penalty amounts stipulated in the License Agreement shall become double after completion of every 5 (five) years from the date of commencement of License Agreement on rolling basis.
- 18.2.2. Licensee shall comply with the laws of land including Nagpur Pollution Control Board guidelines, building guidelines, fire norms etc. Maha-Metro shall not be held liable for any change/modification in these laws which adversely affect this agreement. Licensee shall have no right/ claim in this regard, whatsoever the reason may be.

18.2.3. Licensee shall bear all salaries, wages, bonuses, payroll taxes or accruals including gratuity, superannuating, pension and provident fund contributions, contributions to worker's compensations funds and employees state insurance and other taxes and charges and all fringe and employee benefits including statutory contributions in respect of such personnel employed/deployed by the Licensee. These personnel shall at no point of time be construed to be employees of Maha-Metro and the Licensee shall be solely responsible for compliance with all labour laws which shall include all liabilities of the Provident Fund Act, ESI Act, Workmen's compensation Act, Minimum Wages Act and other Labour Welfare Act in respect of its personnel. The Licensee shall indemnify Maha-Metro from any claims that may arise in connection with above.

18.2.4. Employees conduct:

The Licensee shall ensure that all persons employed behave in an orderly and disciplined manner and that the said employees are prohibited from carrying on any unlawful, unfair activities or demonstrations. The personnel deployed shall be decent, courteous and without any adverse or criminal background. Licensee shall arrange ID cards for their personnel from Pass Section/ Maha-Metro Ltd. as per extent rules for the same. All the Licensee's personnel shall be required to possess ID card issued by Maha-Metro while working in Maha-Metro's premises as per prevailing procedure. Access inside the stations in paid areas shall be through smart cards as per prevailing applicable charges, in addition to the valid ID cards.

18.2.5. Notices :

- a. Maha-Metro and Licensee voluntarily and unequivocally agrees that any notices to be served with reference to the said agreement shall be sufficiently served and given if delivered to-

If to Authority:

Address : Maharashtra Metro Rail Corporation Limited
Metro House, 28/2 Anand Nagar, C K Naidu Road,
Civil Lines, Nagpur-440001
Telephone : 0712 –
Fax :
Email :
Kind Attention : **Managing Director**
Cc : **Authority Representative**

If to the Licensee

Name : M/s
Address : ""
Telephone : 0712 –
Fax :
Mobile :
Attention :

Draft License Agreement for 'Licensing of Built-up Spaces at Khapri Metro Station, New-Airport Metro Station, Airport Metro Station and Jaiprakash Nagar Metro Station of Nagpur Metro Rail Project for a period of 30 Years.'

- b. That any notice or correspondence under the terms of this License shall be in writing by registered post/ Speed Post/ Courier or delivered personally. All activities including day to day management, billing, cancellation/termination/surrender etc. shall be carried out from the office of the General Manager/Property Business or by his duly authorized representative. All Notice shall be addressed as follows:
- c. No instruction/ notice of any party if not communicated in writing, shall be entertained by the other party.


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

For and on behalf of
THE AUTHORITY by:

(Signature)



(Name)

(Designation)



THE COMMON SEAL OF Licensee has been
affixed pursuant to the resolution passed by
the Board of Directors of the Licensee at its
meeting held on the day of 20.....
hereunto affixed in the presence of
....., Director, who has signed these
presents in token thereof and,
company Secretary / Authorised Officer who
has countersigned the same in token thereof
\$;

2.

.....



^{\$} To be affixed in accordance with the articles of association of the Licensee.

Annexures

Annexure – 1 Details of Built-up Space offered for Licencing

Sr. No.	Station Name	Property Business Space Number	Level/Floor	Location	Area (In Sq. Mts.)
1	Khapri Metro Station	KRI/PD-01	Mezzanine Level	Unpaid	237.11
2	Khapri Metro Station	KRI/PD-04	Mezzanine Level	Unpaid	237.11
3	New-Airport Station	NAPT/PD-01	Road Level	Unpaid	119.7
4	Airport Metro Station	APOT/PD-01 & G-02	Road Level (301.22 sqm) + Basement (143.84 Sqm)	Unpaid Area	445.06
5	Airport Metro Station	APOT/PD-05	Concourse Level	Unpaid Area	126.88
6	Airport Metro Station	APOT/PD-06 & G-03	Concourse Level (399.50 Sqm) + Basement (314.20 Sqm)	Unpaid Area	713.7
7	Jaiprakash Nagar Metro Station	JIN/PD	Road Level	Unpaid Area	291.83
8	Jaiprakash Nagar Metro Station	JIN/PD-01	Concourse Level - 1	Paid Area	105.24
9	Jaiprakash Nagar Metro Station	JIN/PD-02	Concourse Level - 1	Paid Area	106.76
10	Jaiprakash Nagar Metro Station	JIN/PD-05	Concourse Level - 2	Unpaid Area	1099.13
11	Jaiprakash Nagar Metro Station	JIN/PD-06	Concourse Level - 2	Paid Area	313.85
12	Jaiprakash Nagar Metro Station	JIN/PD-07	Concourse Level - 3	Unpaid Area	812.81

Note :

1. Areas indicated below are approximate. Actual area measured at time of handing over shall be final and binding. If there is any variation in area the License Fees and other dues shall be for actual area handed over.
2. All built-up spaces offered on license basis are available on “as is where is basis”.
3. All built-up spaces can be utilised for any activity except the activities specified in banned list as detailed in Annexure – 2 : List of usages banned/ negative list

Annexure – 2 : List of usages banned/ negative list

1. Any product / Service the sale of which is unlawful /illegal or deemed unlawful under any Indian act or legislation.
2. Any product the storage and sale of which may lead to or be considered as a fire hazard; such as fire crackers, industrial explosives, chemicals etc.
3. Sale of liquor and alcohol based drinks or beverages.
4. Sale of tobacco and tobacco products.
5. ATMs
6. Coal/Gas based cooking strictly prohibited.
7. Advertisement at any location and in any format.
8. Banqueting and similar activities
9. Restaurant, food courts, etc. except for local/ limited use as per prior approval of Maha-Metro.

Annexure-3 : Handing Over Note

Date: ____ / ____ / 20.....

The property business space bearing number and admeasuring Sqm at Maetro Station is handed over to the Licensee, for its operation and maintenance on (date).at.....(time), in the presence of representatives of

Licensee hereby acknowledge the receipt and assumes all responsibility of the above described site, as provided in the license Agreement, from the date and time stated above.

Licensee

AGM Property Development

Electrical & Maintenance Department

Civil & Structures Department

Station Manager/Station Controller

Annexure 4 – Taking Over Note

Date: ____ / ____ / 20.....

Vacant possession of Metro Station earlier assigned under SNR is taken over by SM/SC on (Date)..... (Time) from the Licensee In the presence of representatives of

The Vacant possession of property business space bearing number and admeasuring Sqm at Metro Station earlier handed over to the Licensee, for its operation and maintenance on (date).at.....(time), is taken over by SM/SC on (Date)..... (Time) from the Licensee In the presence of representatives of

Licensee

AGM Property Development

Electrical & Maintenance Department

Civil & Structures Department

Station Manager/Station Controller