

OPERATION SERVICES AGREEMENT

Operation & Management of India International Convention & Expo Centre

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OPERATION SERVICES AGREEMENT

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

BETWEEN

1 **International Exhibition and Convention Centre Limited**, a company incorporated under the provisions of the Companies Act, 2013 and having its registered office at [●] (hereinafter referred to as the "**SPV**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns) of One Part;

AND

2 [**** **LIMITED**], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at ****, (hereinafter referred to as the "**Operator**" 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) The New Delhi Exhibition and Convention Center is envisioned as a world-class, transit oriented, mixed use district, providing one of the largest facilities of its kind in India and Asia and is planned to be developed at Sector 25, Dwarka, New Delhi, as a part of the Delhi Mumbai Industrial Corridor.
- (B) Delhi Mumbai Industrial Corridor Development Corporation ("**DMICDC**"), a company registered under the Companies Act, 1956, having its registered office at Room No. 341 B, 3rd floor, Hotel Ashok, Diplomatic Enclave, 50 B, Chanakyapuri, New Delhi, 110 021 is engaged in the development of the Delhi Mumbai Industrial Corridor. Department of Industrial Policy and Promotion ("**DIPP**"), under the Ministry of Commerce has incorporated the SPV for undertaking all activities required for the development of the exhibition and convention facilities. DMICDC is the knowledge partner to DIPP for this Project.
- (C) The SPV had invited proposals by its Request-for-proposal No. *** dated *** (the "**RfP**") for selecting a bidder to operate and manage the Project Facilities and had shortlisted certain bidders including, *inter alia*, the Operator.
- (D) DMICDC had prescribed the technical and commercial terms and conditions, and invited bids from the shortlisted bidders pursuant to the RfP for undertaking the Project. After evaluation of the bids received, DMICDC identified M/s [_____] as the "Selected Bidder" / "Operator" and accordingly issued its letter of award No. *** dated *** (hereinafter referred to as the "**LOA**") to the Operator requiring, *inter alia*, the execution of this Agreement within [●] days of the date of issue of the LOA thereof.
- (E) By its letter dated ***, the Operator has conveyed that it shall undertake and perform the obligations and exercise the rights of the Operator including the obligation to enter into this Agreement pursuant to the LOA. The SPV has agreed to the said request of the Operator, and has accordingly agreed to enter into this Agreement with the Operator for execution of the Project subject to and on the terms and conditions set forth hereinafter.
- (F) The Selected Bidder has, in accordance with the RfP and the LOA, promoted and incorporated a company under the provisions of the Companies Act, 2013 to enter into this Agreement for undertaking, *inter alia*, the operations and management of the Project and to fulfil other obligations of the Operator pursuant to the LOA and has requested the SPV to accept the Operator as the entity which shall undertake and perform the obligations of operation and Management of the Project.

- (G) The SPV has accordingly agreed to enter into this Agreement with the Operator for the operations and management of the Project Facilities, subject to and on the terms and conditions set forth hereinafter, and for an initial period (the “**Term**”) comprising (a) the period commencing from the date of this Agreement till the COD (as declared by the SPV) during which the Project Facilities shall be constructed by the EPC Contractor where the Operator shall provide inputs to the SPV to develop building designs as per Good Industry Practices for the Project to optimize the operations at the Project (hereinafter referred to as the “**Design Phase**”), and (b) a period of 15 years during which the Operator shall operate and manage the Project Facilities in accordance with the terms of this Agreement (“**Operations Period**”).

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

ARTICLE 1: DEFINITIONS AND INTERPRETATION

1.1 Definitions

1 The words and expressions beginning with capital letters and defined in this Agreement (including those in Article 36) shall, unless the context otherwise requires, have the meaning ascribed thereto herein and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules. The words and expressions beginning with capital letters and not defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed to them under the RfP.

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) references to "**construction**" include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" shall be construed accordingly;
- (g) any reference to any period of time shall mean a reference to that according to Indian Standard Time;
- (h) any reference to a day shall mean a reference to a calendar day;
- (i) references to a "**business day**" shall be construed as a reference to a day (other than a Sunday) on which banks in Delhi are generally open for business;
- (j) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;
- (k) references to any date or period shall mean and include such date, period as may be extended pursuant to this Agreement;

- (l) 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;
 - (m) the words importing singular shall include plural and vice versa;
 - (n) references to any gender shall include the other and the neutral gender;
 - (o) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);
 - (p) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
 - (q) 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;
 - (r) any reference at any time to any agreement, deed, instrument, license or document of any description shall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this sub-clause shall not operate so as to increase liabilities or obligations of the SPV hereunder or pursuant hereto in any manner whatsoever;
 - (s) 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 or, as the case may be, in this behalf and not otherwise;
 - (t) 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;
 - (u) 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; and
 - (v) the damages payable by either Party to the other 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**").
- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Operator to the SPV shall be provided free of cost and in three copies, and if the SPV 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 of this Agreement, 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 and errors/discrepancies

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

- (a) this Agreement; and
- (b) all other agreements and documents forming part hereof;

i.e., the agreement at (a) above shall prevail over the agreements and documents at (b) above.

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

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

ARTICLE 2: SCOPE OF THE PROJECT

2.1 Scope of the Project¹

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

During the Design Phase

- (a) reviewing detailed engineering drawings and any updates to the master plan or layout or schematic drawings prepared and submitted by the EPC Contractor with the view of optimizing operations only in the Project; Inputs would be required to be limited to the operational facility only. No change in master plan or arrangement of individual facility shall be considered.
- (b) undertaking brand building and marketing activities in relation to the Project

During the Operations Period

- (a) operation and maintenance of the Project Facilities as specified in Schedule B in accordance with the provisions of this Agreement and in conformity with the Specifications and Standards set forth in Schedule C;
- (b) management of all aspects of operations of the Project Facilities in a professional, efficient and effective manner in accordance with Good Industry Practice; and
- (c) advising and providing recommendations to the SPV in the areas of planning, forecasting, analysis of statistical data, and other topics related to the economical and efficient operation of the Project/ Project Facilities
- (d) performance and fulfilment of all other obligations of the Operator in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Operator under this Agreement.

2.2 Notwithstanding anything to the contrary contained herein, the SPV may, at any point before the 7th (seventh) anniversary of the COD, develop an additional exhibition space of approximately 190,000 sq. m. ("**Future Development**"). It is clarified that the Future Development shall be undertaken in phases, and in consultation with the Operator. In the event of such Future Development being undertaken, the obligations of the Operator under the Agreement will mandatorily extend to such Future Development.

2.3 In the event that the Future Development is commissioned after the 7th (seventh) anniversary of the COD, the Operator shall, within 3 (three) months of the 7th (seventh) anniversary of the COD, have the right, but not the obligation, to terminate this Agreement, subject to the condition that the Operator shall not be entitled to any Termination Payment from the SPV on account of such Termination.

¹ To be read alongside Article 5 (Obligations of the Operator)

ARTICLE 3: APPOINTMENT OF THE OPERATOR

3.1 Award of the Agreement

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the SPV hereby appoints the Operator to perform the scope of work set forth herein (the “**Operation Services**”), including the exclusive right, license and authority to operate and manage the Project for the Operations Period, and the Operator hereby agrees to operate and manage the Project subject to and in accordance with the terms and conditions set forth herein.
- 3.1.2 Subject to and in accordance with the provisions of this Agreement and Applicable Laws, the award of this Agreement shall, without prejudice to the provisions of Clause 3.1.1, entitle the Operator to undertake the Operation Services, subject to the conditions stipulated herein.
- 3.1.3 The SPV shall on a best effort and non-financial basis facilitate and assist the Operator in obtaining all approvals and Applicable Permits that may be required by the Operator from any Government Instrumentality for the Operation Services. The SPV will provide all reasonable support and non-financial assistance to the Operator in procuring Applicable Permits as may be required from time to time, however the principal obligation for obtaining the Applicable Permits shall be that of the Operator.
- 3.1.4 Subject to and in accordance with the provisions of this Agreement, the award of this Agreement shall oblige or entitle (as the case may be) the Operator to:
- (a) access the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
 - (b) investigate, study and provide design inputs with regard to the Project;
 - (c) perform activities in relation to management, marketing, administration, operation and Operation Services of the Project;
 - (d) grant sub-license (of built-up spaces) or enter into letting, sub-letting, franchising, management service, sub-contracting or other suitable arrangements on mutually agreed conditions (the “**Contractual Arrangements**”) for a period co-terminus with the Operations Period or earlier Termination as per the terms and conditions of this Agreement as the case may be with any Persons of its choice for carrying on its business of managing, marketing and operating the Project Facilities
 - (e) ensure optimal management, operation, maintenance and safety of the Project throughout the Term, either by performing the operation and maintenance itself, or by making durable, effective and permanent arrangements for due performance of the operation and maintenance obligations by a third party(s);
 - (f) perform and fulfil all of the Operator's obligations under and in accordance with this Agreement;
 - (g) bear and pay all costs, taxes, expenses and charges in connection with or incidental to the performance of the obligations of the Operator under this Agreement; and
 - (h) not assign, transfer or sublet or create any lien or Encumbrances on this Agreement, or on the whole or any part of the Project nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement.
 - (i) monitor, control and if required restrict access to the Project Facilities by any Person other than the authorized personnel, officers and assignees of the SPV or the Operator;

3.2 No competing facility

3.2.1 From the date of signing this Agreement up to the expiry of the Term, unless this Agreement is terminated earlier by either Party, the Operator and/ or its Affiliate(s) shall not, directly or indirectly, construct, operate, manage, provide consultancy services or be involved in any manner whatsoever with any exhibition or convention facility which is within an aerial radius of 100 km from the outer periphery of the Project Facility.

3.2.2 Notwithstanding anything stated in Clause 3.2.1, the Operator shall have a right of first refusal to operate and manage any multipurpose arena or other project planned by the SPV within the Site (as defined in this Agreement) subject to the following conditions:

- (a) The multipurpose arena or project is fully funded by the Government of India;
- (b) The Operator participates in and qualifies for the bid process conducted to select an operator for such multipurpose arena or project; and
- (c) The Operator's financial bid is the lowest/ highest (depending on the structure of the contract and if it will be an operator services agreement or management fee agreement) in the abovementioned bid process, or, in the event that the Operator's financial bid is not the lowest/ highest (as the case may be), the Operator agrees to match the lowest/ highest bid (as the case may be) in the bid process.

The SPV retains the right to appoint a wholly government-owned company/ agency as operator of such multipurpose arena or project, in which case the Operator shall not be entitled to exercise such right of first refusal.

ARTICLE 4: CONDITIONS PRECEDENT AND CONDITIONS SUBSEQUENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 22, 32 and 35, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the "**Conditions Precedent**") and the conditions subsequent specified in the Clause 4.1.3 (the "**Conditions Subsequent**").

4.1.2 The Operator may, upon providing the Security During Design Phase to the SPV preceding to the COD, in accordance with Article 9, and having delivered to the SPV, the legal opinion referred to in Clause 4.1.4 (e) below, by notice require the SPV to satisfy all or any of the Condition Precedent set forth in this Clause 4.1 ("**SPV Conditions Precedent**") to be satisfied within a period of 30 (thirty) days of the notice, and the SPV Conditions Precedent shall be deemed to have been fulfilled when the SPV shall have:

- (a) entered into an EPC Contract for the construction of Phase I of the Project Facilities;
- (b) procured for the Project Facilities, the Site / land not falling within any area that would in any way restrict the design, building, operation and management of the Project as envisaged under this Agreement;
- (c) procured the approval for the conceptual master plan of the Project from South Delhi Municipal Corporation.

4.1.3 Conditions Subsequent for the SPV

The Operator may, upon providing the Performance Security to the SPV subsequent to the COD, in accordance with Article 9, by notice require the SPV to satisfy all or any of the Conditions Subsequent, set forth in the Clause 4.1 ("**SPV Conditions Subsequent**"), to be satisfied within a period of 30 (thirty) days of the notice, and the SPV Conditions Subsequent shall be deemed to have been fulfilled when the SPV shall have:

- (a) provided to the Operator Right of Way of the Project Site in accordance with the provisions of Clause 10.3;
- (b) handed over the vacant possession of the Project Site on 'as is where is basis' to the Operator upon COD;
- (c) has provided construction of the Site in accordance with the design details provided in this agreement, unless requested or approved by the Operator;
- (d) provided, at its sole discretion, service level agreements ("**SLAs**") to the Operator for the Infrastructure Services and Infrastructure Facilities outlined in Schedule B.. SLAs will be defined as per technical guidelines of the Project shared in Schedule A and B; and
- (e) Applicable Permits defined in Schedule D will be obtained by SPV. All other permits will be obtained by the Operator.

4.1.4 Conditions Precedent for the Operator

The Conditions Precedent required to be satisfied by the Operator within a period of 45 (forty five) days from the date of this Agreement ("**Operator Conditions Precedent**") shall be deemed to have been fulfilled when the Operator shall have:

- (a) Provided the Security During Design Phase to the SPV;

- (b) delivered to the SPV confirmation in original, of the correctness of their representations and warranties as set forth in Sub- clauses (k), (l), and (m) of Clause 7.1 of this Agreement; and
- (c) delivered to the SPV a legal opinion from the legal counsel of the Operator with respect to the authority of the Operator to enter into this Agreement and the enforceability of the provisions thereof.

4.1.5 Conditions Subsequent for the Operator

The Conditions Subsequent required to be satisfied by the Operator within a period of 30 (thirty) days prior the occurrence of the COD (“**Operator Conditions Subsequent**”) shall be deemed to have been fulfilled when the Operator shall have:

- (a) Provided the Performance Security to the SPV; and
- (b) executed and procured execution of the Escrow Agreement;

4.1.6 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent and Conditions Subsequent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent or Conditions Subsequent (as the case may be) for which it is responsible.

4.2 Damages for delay

In the event that (i) any Party does not procure fulfilment of any or all of the Conditions Precedent or Conditions Subsequent set forth in Clause 4.1 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the other Party or due to Force Majeure, the Party shall pay to the other Party Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

ARTICLE 5: OBLIGATIONS OF THE OPERATOR²

5.1 Obligations of the Operator

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Operator shall
- (A) review the detailed engineering drawings and / or any updates to the master plan prepared by the EPC Contractor and provide its inputs to optimize operations at the Project Facilities and conduct brand building and pre-marketing activities during the Design Phase and
 - (B) undertake the operation and management of the Project during the Operations Period and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Operator shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to Clauses 5.1.1 and 5.1.2, the Operator shall discharge its obligations in accordance with the National Building Code, Green Building Code, Indian Green Building Council, Development Control Rules, the principles of Good Industry Practice and as a reasonable and prudent Person.
- 5.1.4 The Operator shall at its own cost and expense, in addition to and not in derogation of its obligations elsewhere, set out in this Agreement, subject to the corresponding scope of services required to be performed by the Operator during the Design Phase, the Operations Period or the entire Term, as the case may be:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details, as may be required for obtaining all Applicable Permits and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
 - (b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
 - (c) perform and fulfil obligations under the financing agreements (if any);
 - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by the Operator or its Contractors in connection with the performance of the Operator's obligations under this Agreement;
 - (f) procure all Applicable Permits under Applicable Laws and ensure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Operator's obligations under this Agreement;
 - (g) maintain and provide firefighting services in accordance with the provisions of this Agreement and Good Industry Practice;
 - (h) 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;
 - (i) support, cooperate with and facilitate the SPV in the implementation and operation of the Project in accordance with the provisions of this Agreement;

² To be read alongside Article 2: Scope of Work

- (j) Get prior approval of the SPV in case there is any change in the Project and Project Facilities defined under the Project during the Term;
- (k) Ensure the sub-lessee/sub-contractor to perform its obligations under this Agreement without in any way relieving the Operator of its liability in this behalf; provided that the Operator shall ensure that any of its obligations, which are relevant to the scope of work / terms of engagement / of a sub-lessee / sub-contractor, are incorporated in the terms and conditions under which such sub-lessee / sub-contractor is appointed / retained. The Operator / sub-lessee / sub-contractor shall indemnify and keep indemnified the SPV from and against all liabilities and costs in this behalf;
- (l) transfer the Project to the SPV upon Termination of this Agreement, in accordance with the provisions thereof; and
- (h) Ensure timely payments to the SPV in accordance with the terms of this Agreement.

5.1.5 Additional obligations of the Operator during the Operations Period

In addition to its obligations under this Clause 5 and not in derogation of its obligations elsewhere set out in this Agreement, the Operator shall at its own cost and expense:

- (a) Operate, manage, repair the Project/Project Facilities and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice;
- (b) Employ qualified Persons to efficiently operate and manage the Project Facilities;
- (c) Make available all necessary financial, managerial, technical, technological and other resources for the O&M of the Project to conform with the requirements of this Agreement;
- (d) Maintain the Project in accordance with the provisions of Schedule B
- (e) Ensure maintenance of proper and accurate records, data and accounts relating to the operations of the Project;
- (f) Comply with all Applicable Laws, including those relating to safety, health sanitation, environment, labour and hazardous and dangerous materials;
- (g) Except as otherwise provided or authorized under this Agreement and without the prior written consent of the SPV, not remove or replace any asset comprised in the Project;
- (h) Carry out operations and provide services and facilities as per the requirements of this Agreement and make changes only with the prior approval of the SPV; and
- (i) Not undertake or cause any other person to undertake any prohibited or restricted activities at the Site or the Project Facilities or part thereof.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Operator shall at all times be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement and no default under any Project Agreement or agreement shall excuse the Operator from its obligations or liability hereunder.

5.2.2 The Operator shall submit to the SPV the drafts of all Project Agreements or any amendments or replacements thereto for its review and comments, and the SPV shall have the right but not

the obligation to undertake such review and provide its comments, if any, to the Operator within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Operator shall submit to the SPV a true copy thereof, duly attested by a director of the Operator, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the SPV and/or its failure to review and/or convey its observations on any document shall relieve the Operator of its obligations and liabilities under this Agreement in any manner nor shall the SPV be liable for the same in any manner whatsoever.

- 5.2.3 The Operator shall ensure that each of the Project Agreements contains provisions that entitle the SPV to step into such agreement, in its sole discretion, in substitution of the Operator in the event of Termination or Suspension. For the avoidance of doubt, it is expressly agreed that in the event the SPV does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the SPV, provisions in each of the Project Agreements shall expressly provide for such eventuality. The Operator expressly agrees to include this covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the SPV an acknowledgment and undertaking, in a form acceptable to the SPV, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept this covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the SPV in the event of Termination or Suspension.
- 5.2.4 Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that selection or replacement of any sub-Contractor and execution of any sub-Contract shall be subject to the prior approval of the SPV from national security and public interest perspective, the decision of the SPV in this behalf being final, conclusive and binding on the Operator, and undertakes that it shall not give effect to any such selection or contract without prior approval of the SPV. For the avoidance of doubt, it is expressly agreed that approval of the SPV hereunder shall be limited to national security and public interest perspective, and the SPV shall endeavour to convey its decision thereon expeditiously. It is also agreed that the SPV shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Operator or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

- 5.3.1 The Operator shall not undertake or permit any Change in Ownership, except with the prior approval of the SPV.
- (a) In case the Operator is promoted by a consortium, the *[insert the name of members of the consortium]* shall be required to commit to a minimum equity holding in the Operator as:
- (i) During the Design Phase, no change in shareholding of the Operator and/or the Bidding Consortium shall be permitted.
- (ii) After the Commercial Operation Date, *[the Lead Member of the Consortium]* shall hold a minimum of 51% (fifty one percent) in the Operator at all times for a period of 5 (five) years from the COD.
- (b) *[Insert name of the Selected Bidder who is a sole applicant]* shall be required to hold and maintain the following minimum equity participation of the Operator:

- (i) 100% (one hundred percent) during the Design Phase; and
- (ii) at least 51% (fifty one), at all times for a period of for 5 (five) years from the COD;

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Operator agrees and acknowledges that:

- (i) all acquisitions of equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any equity, in aggregate of not less than 15% (fifteen per cent) of the total equity of the Operator, or
- (ii) acquisition of any control directly or indirectly of the Board of Directors of the Operator by any person either by himself or together with any person or persons acting in concert with him

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

For the purposes of this Clause 5.3.2:

- (a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of equity, or the control of the Board of Directors, as the case may be, of the Operator;
- (b) the indirect transfer or control of legal or beneficial ownership of equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Operator; and
- (c) the indirect transfer or control of legal or beneficial ownership of equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Operator; and
- (d) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the equity of the Operator, not less than half of the directors on the Board of Directors of the Operator or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the equity of the Operator shall constitute acquisition of control directly or indirectly of the Board of Directors of the Operator.

5.4 Employment of foreign nationals

The Operator acknowledges, agrees and undertakes that employment of foreign personnel by the Operator and/or its Contractors and their sub-contractors shall be subject to grant of requisite

regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Operator and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Operator or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Operator from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of trained personnel

The Operator 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.

5.6 Sole Purpose of the Operator

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

ARTICLE 6: OBLIGATIONS OF THE SPV

6.1 Obligations of the SPV

- 6.1.1 The SPV shall, at its own cost and expense undertake, comply with and perform all its obligations as set out in this Agreement or arising hereunder.
- 6.1.2 The SPV agrees to provide support to the Operator 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) upon receiving the Performance Security under Clause 9.1, handover unencumbered possession of Site and Project Facilities to the Operator.
 - (b) upon written request from the Operator and subject to the Operator complying with Applicable Laws, provide all reasonable support and assistance on a best effort basis to the Operator in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project. The SPV shall not be responsible for the non-procurement of any Applicable Permits; The SPV support shall be non-financial in nature.
 - (c) upon written request from the Operator, assist the Operator in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity as well as all services provided by SPV as part of this contract.
 - (d) procure that no barriers are erected or placed on the Site by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law, VIP movement and order or collection of inter-state taxes, in a manner which affects access to the Project Facilities;
 - (e) 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;
 - (f) support, cooperate with and facilitate the Operator in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
 - (g) upon written request from the Operator and subject to the provisions of Clause 5.4, provide reasonable assistance to the Operator and any expatriate personnel of the Operator or its Contractors to obtain applicable visas and work permits in such manner as may be necessary to facilitate the compliance of this Agreement and the Project Agreements.

ARTICLE 7: REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Operator

The Operator represents and warrants to the SPV that:

- (a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with the terms hereof and the obligations of the Operator under this Agreement will be legally valid, binding and enforceable obligations against the Operator 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 other jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of the Operator's Memorandum and Articles of Association or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending against the Operator or any of its Associates or, to the Operator's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) the Operator or any of its Associates 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 the Operator's ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) the Operator and its Associates have the financial standing and resources to fund the required equity and to raise the debt necessary to undertake and implement the Project in accordance with this Agreement;

- (l) it shall at no times undertake or permit any change in Ownership except in accordance with the provisions of Clause 5.3 and that the existing promoters together with their Associates hold not less than 100% (one hundred per cent) of its issued and paid-up equity as on the date of this Agreement, and that the respective holding of each promoter conforms to the representation made by the Operator and accepted by the SPV as a part of the Bid;
- (m) the Operator is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the SPV to enter into this Agreement with the Operator pursuant to the LOA, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all rights and interests of the Operator in the Project shall pass to and vest in the SPV on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on the part of the Operator or the SPV, and that none of the Project Assets shall be acquired by the Operator subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person save and except as expressly provided in this Agreement;
- (o) no representation or warranty by the Operator contained herein or in any other document furnished by it to the SPV or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading; and
- (p) no sums, in cash or kind, have been paid or will be paid, by or on behalf of the Operator, to any person by way of fees, commission or otherwise for securing the award of this Agreement or entering into this Agreement or for influencing or attempting to influence any officer or employee of the SPV in connection therewith.

7.2 Representations and Warranties of the SPV

The SPV represents and warrants to the Operator that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under the Agreement;
- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) there are no actions, suits or proceedings pending or, to the SPV's knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;
- (f) 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 SPV's ability to perform its obligations under this Agreement;

- (g) it has complied with Applicable Laws in all material respects;
- (h) all information provided by the SPV in the RfP in connection with the Project is to the best of its knowledge and belief true and accurate in all material respects;
- (i) it has the right, power and authority to manage and operate the Project up to COD;
- (j) it has good and valid right, title and interest to the Site, and has power and authority to grant a license in respect thereto to the Operator; and
- (k) it is the true and lawful owner of the Site and has the power and authority to grant License in respect thereto to the Operator;
- (l) upon the Operator performing the covenants herein, the SPV shall not at any time during the Term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Operator, in accordance with this Agreement.

7.3 Disclosure

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

ARTICLE 8: DISCLAIMER

8.1 Disclaimer

- 8.1.1 The Operator acknowledges that prior to the execution of this Agreement, the Operator has, after a complete and careful examination, made an independent evaluation of the RfP, scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the SPV 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. Save as provided in Clause 7.2, the SPV makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy and/or completeness of the information provided by it and the Operator confirms that it shall have no claim whatsoever against the SPV in this regard.
- 8.1.2 The Operator 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 SPV shall not be liable for the same in any manner whatsoever to the Operator or any person claiming through or under it.
- 8.1.3 The Operator accepts that it is solely responsible for the verification of any design, data, design, documents or information provided to the Operator by the SPV, its consultants or any Government Instrumentality and that it shall accept and act thereon at its own cost and risk.
- 8.1.4 The Operator shall be solely responsible for the contents of its proposal, adequacy and correctness of the design and drawing, data and detailed engineering prepared or procured by the Operator for implementing the Project.
- 8.1.5 The Operator is entering into this Agreement on the basis of its satisfaction based on the due diligence audit undertaken by it.
- 8.1.6 The Operator accepts that all designs and drawings of the Project Facilities are the sole intellectual property of the SPV. The Operator will use any information shared as part of this project only for the purpose for which it was disclosed and shall not exploit any such information for its benefits or the benefits of other parties.

ARTICLE 9: SECURITY DURING DESIGN PHASE & PERFORMANCE SECURITY

9.1 Security During Design Phase

The Operator shall, for the performance of its obligations hereunder during the Design Phase, provide to the SPV no later than 45 (forty five) days from the date of this Agreement, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to the 5% (five percent) of the Annual Consultancy Fees, in the form set forth in Part A of Schedule-E (the "**Security During Design Phase**"). Until such time the Security During Design Phase is provided by the Operator pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Security During Design Phase pursuant hereto, the SPV shall release the Bid Security to the Operator. The Security During Design Phase shall be kept valid initially for 1 (one) year, and thereafter kept valid and effective by renewing its validity at least 30 (thirty) days before its expiry until the date by which the Performance Security is required to be furnished.

9.2 Performance Security

The Operator shall, for the performance of its obligations hereunder during the Term, provide to the SPV no later than 15 (fifteen) days from the COD, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to the MAG, in the form set forth in Part B of Schedule-E (the "**Performance Security**"). The Performance Security shall (a) initially, and until the third anniversary of the COD, be for an amount equivalent to the MAG quoted by the Selected Applicant under the RfP, and (b) commencing from the third anniversary of the COD for an amount equivalent to the Annual Licence Fee for the previous Contract Year. The Performance Security shall accordingly be annually revised to the amounts specified in this Clause 9.2 for each successive year.] Until such time the Performance Security is provided by the Operator pursuant hereto and the same comes into effect, the Security During Design Phase shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the SPV shall release the Security During Design Phase to the Operator.

The Performance Security shall be kept valid initially for 1 (one) year and thereafter kept valid and effective during the Operations Period by renewing its validity at least 30 (thirty) days before its expiry. It is hereby clarified that the Operator shall take all steps as may be necessary to increase the amount of the Performance Security so that it is equivalent to the requisite amount as stated hereinabove.

9.3 Appropriation of Performance Security

Upon occurrence of an Operator Default, the SPV shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security as Damages for such Operator Default. Upon such encashment and appropriation from the Performance Security, the Operator shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security, and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Operator shall, within the time so granted, replenish or furnish fresh Performance Security as aforesaid failing which the SPV shall be entitled to terminate this Agreement in accordance with Article 25. Upon replenishment or furnishing of a fresh Performance Security, as the case may be, as aforesaid, the Operator shall be entitled to an additional Cure Period of 60 (sixty) days for remedying the Operator Default, and in the event of the Operator not curing its default within such Cure Period, the SPV shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 25.

9.4 Release of Performance Security

The Performance Security shall remain in force and effect for the Term and shall cease to be in force and effect only when the SPV shall have issued the Vesting Certificate to the Operator.

ARTICLE 10: RIGHT OF WAY

10.1 The Site

The Site of the Project shall comprise of the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the SPV to the Operator as a licensee under and in accordance with this Agreement (the "**Site**" / "**Land**" / "**Project Site**").

10.2 Licence, access and Right of Way

10.2.1 In consideration of the Annual License Fee, this Agreement and the covenants and warranties on the part of the Operator herein contained, the SPV, in accordance with the terms and conditions set forth herein, hereby grants to the Operator, commencing from COD, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to operate and manage the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereof belonging to or in any way appurtenant thereto or enjoyed therewith, for the entire Term and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.2 It is expressly agreed that the Licence granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the SPV to terminate the Licence, upon the Termination of this Agreement for any reason whatsoever.

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

10.2.4 It is expressly agreed that

- (i) trees on the Site are property of the SPV except that the Operator shall be entitled to exercise usufructary rights thereon during the Term;
- (ii) any archaeological discoveries shall belong to and vest in the Government and the Operator shall promptly report the discovery thereof to the SPV and follow its instructions for safe removal thereof; and
- (iii) mining rights do not form part of the licence granted to the Operator under this Agreement and the Operator hereby acknowledges that it shall not have any mining rights or any interest in the underlying minerals or fossils on or under the Licensed Premises. For the avoidance of doubt, mining rights mean the right to mine any and all minerals or interest therein.

10.3 Procurement of the Site

10.3.1 The SPV Representative and the Operator shall, on a mutually agreed date and time, inspect the Site and prepare a memorandum containing an inventory of the Site including the vacant and unencumbered land, buildings, structures, trees and any other immovable property on or attached to the Site. On and after signing the memorandum and until the Transfer Date, the Operator shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Operator shall report such encroachment or occupation forthwith to the SPV and undertake its removal at its cost and expenses.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the SPV to the Operator pursuant hereto free from all Encumbrances and occupations and without the Operator being required to make any payment to the SPV on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Term, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the Licensed Premises shall not be deemed to be Encumbrances.

10.5 Protection of Site from encroachments

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

10.6 Special/temporary right of way

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

10.7 Access to the SPV

The licence, right of way and right to the Site granted to the Operator hereunder shall always be subject to the right of access of the SPV and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

ARTICLE 11: DESIGN OF PROJECT FACILITIES

11.1 Obligations during Design Phase

During the Design Phase, the Operator shall:

- (a) review and examine the reports prepared by the EPC Contractor particularly with respect to operations, maintenance and management of the Project;
- (b) advise the SPV and the EPC Contractor on aspects relating to operation friendly improvements that may be made to the Project including but not limited to space utilization, utilities, circulation areas, common areas, lobbies, staircases, emergency exits, openings and layouts;
- (c) provide inputs in order to maximize space utilization for best commercial returns;
- (d) Identify peak movement and choke points, sizes of common areas, lobbies, meeting places, assembly points, entry/exit points, drop zone for smooth circulation inside and outside the buildings;
- (e) advise on the scope of any modification to the design and drawings prepared for the Project to increase operational efficiency. Such advice shall cover the aspects such as revenue impact and improvement in operational viability;
- (f) discuss the scope of modification with the SPV;
- (g) review the development of detailed drawings as they are submitted by the EPC Contractor and share inputs on such drawings within a period of 15 (fifteen) days of receiving such drawings;
- (h) appoint its representative duly authorised to deal with the SPV in respect of all matters under or arising out of or relating to this Agreement;
- (i) share such inputs taking into account the timelines for completion of the Project under the RfP and such inputs should not have a material impact on the timelines for completion of the Project

It is hereby clarified that the decision of the SPV with regard to implementation of recommendations provided by the Operator in accordance with Clause 12.1 shall be final.

11.2 Drawings

In respect of the Operator's obligations with respect to the drawings of the Project Facilities, the following shall apply:

- (a) The Operator shall review, with reasonable promptness and in such sequence as is consistent with the Project Facilities Completion Schedule, copies of all drawings submitted by the EPC Contractor to the SPV for review and submit its comments/inputs on the same ("**Operator Drawing & Design Inputs**");
- (b) By submitting the Operator Drawing & Design Inputs, the Operator shall be deemed to have satisfied itself and verified that the design and engineering including field construction criteria related thereto are in conformity with the Specifications and Standards and pointed out any deficiencies thereto;

ARTICLE 12: ENTRY INTO COMMERCIAL SERVICE

12.1 Commercial Operation Date

12.1.1 The commercial operation date of the Project shall be the date on which the SPV declares that all construction activities in relation to Phase I of the Project are complete and the Project and Project Facilities are fit for use and commercial operations (the "**COD**"). The Project shall enter into commercial service on COD whereupon the Operator shall be entitled to demand and collect Revenue in accordance with the provisions of Article 18.

12.1.2 The SPV shall, upon occurrence of COD, notify the Operator forthwith.

12.2 Marketing of the Project

12.2.1 The Operator shall be solely responsible for the marketing of the Project and the Project Facilities. The Operator shall be entitled to commence such marketing at its cost and risk from the date of this Agreement and during the Design Phase and to accept Revenue from such users from such date; provided that SPV shall not be liable in any manner whatsoever to any Person in this behalf and the Operator shall disclose the same to such Users.

12.2.2 The Operator shall ensure that the advertising and marketing of the Project Facilities is carried out in a manner that is consistent with and not in derogation of or in conflict with any terms or provisions of this Agreement and the Applicable Laws.

ARTICLE 13: MAINTENANCE

13.1 Maintenance obligations of the Operator

13.1.1 Specific maintenance obligations of the Operator

During the Operations Period, the Operator and SPV shall carry out the following operation and maintenance activities in relation to the Project, in accordance with the procedure for Major Maintenance Works outlined in Schedule B and Good Industry Practices:

(a) **Routine Maintenance**

The Operator will be responsible for carrying out all activities that are necessary for operation of the Project and are conducted on components which are easily and safely accessed using integrated and/or external support equipment.

(b) **Corrective maintenance**

Corrective maintenance shall include maintenance of key parts/components of the Project Facilities whose replacement is imperative and would determine the structural integrity of the Project Facilities. Such activities would include maintenance and repair activities to be conducted after a breakdown or after a deterioration/wear and tear is detected in order to restore the Project Facilities to a condition in which it can accomplish its required function.

The scope of responsibilities of the Operator and the SPV with respect to corrective maintenance has been detailed in Schedule B.

(c) **Replacement and Renewal activities**

Replacement and renewal activities shall include all activities and operations necessary in order to replace any existing component of the Project Facilities having a specific intended use, with an identical or better item, given the evolution of the said asset and techniques. Such activities need to be undertaken, where activities under Clause 13.1.1 (b) (corrective maintenance) cannot guarantee the use of said component of the Project Facilities, or when a Change in law requires such renewal or replacement. The scope of responsibilities of the Operator and the SPV with respect to replacement and renewal activities has been detailed in Schedule B.

13.1.2 In addition to the provisions of Clause 13.1.1 above, during the Term, the Operator shall operate and manage the Project in accordance with this Agreement and if required, modify, repair or otherwise make improvements to the Project to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Good Industry Practice. The obligations of the Operator hereunder shall include the following:

(a) To operate, manage, repair the Project/Project Facilities at its own cost and risk during the Operations Period in accordance with the provisions hereof, including the Specifications and Standards, the Applicable Laws, the terms of Applicable Permits and Good Industry Practice;

(b) negotiating, executing (in the Operator's name), delivery, and administration of any and all licenses, occupancy agreements, rental agreements, event booking commitments, advertising agreements, supplier agreements, service contracts (including, without limitation, contracts for cleaning, decorating and set-up, general maintenance and maintenance and inspection of HVAC systems, elevators, escalators, stage equipment, fire control panel and other safety equipment, staffing and personnel needs, including guards and ushers, and other services which are necessary or appropriate) in relation to the Project;

- (c) To employ qualified Persons to efficiently operate and manage the Project Facility;
 - (d) To make available all necessary financial, managerial, technical, technological and other resources for the operations and maintenance of the Project to conform with the requirements of this Agreement;
 - (e) Replace, repair, replenish or renew, as the case may be, the materials, goods, machinery, equipment, capital components and spares etc. and undertake preventive maintenance at its cost as necessary to carry out efficient operations and maintenance of the Project/ Project Facilities (limited to the scope of responsibilities defined in Schedule B) and to provide adequate service standards and to ensure that the Project/Project Facilities are transferred to the SPV in a good condition except for the normal wear and tear having regard to their life, construction use and the period of use, in accordance with the terms of this Agreement;
 - (f) Comply with all Applicable Law, including those relating to safety, health, sanitation, environment, labour and hazardous and dangerous materials;
 - (g) Promptly and diligently repair, replace or restore the Project/ Project Facilities or part thereof which may be destroyed, lost or damaged due to negligence on part of Operator or any of its employees, sub-contractors, associates or representatives. A joint survey of the Project Facilities will be carried out/listed immediately after commissioning by the SPV and Operator during handover. Also, a joint survey shall be carried out in the first week of every month for verification/status of all project facilities within the scope of Operator to establish any subsequent monthly damages during operations. Any damage identified due to negligence on part of Operator or any of its employees, sub-contractors, associates or representatives will have to be repaired, replaced or restored as required
 - (h) Except as otherwise provided or authorized under this Agreement, not, without the prior written consent of the SPV, remove or replace any asset comprised in the Project/ Project Facilities;
- 13.1.3 The Project Facilities shall be audited by a joint team comprising an SPV Representative and an authorized representative of the Operator to evaluate the status of the Project Facilities. The team constituted in furtherance of this Clause 13.1.3 shall conduct the audit of the Project Facilities to evaluate the status within the first week of every month and identify items which need corrective maintenance or replacement /renewal and allocate the responsibility of such corrective maintenance or renewal/replacement activity to the relevant Party, in accordance with the guidelines mentioned in Schedule B.
- 13.1.4 The Operator shall remove promptly from the Project all surplus materials, waste materials (including hazardous materials and waste water), rubbish and other debris (including, without limitation, accident debris) and keep the Project in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice.
- 13.1.5 The Operator shall maintain, in conformity with Good Industry Practice, all Project Facilities or other structures situated on the Site but not forming part of the Maintenance Manual and Safety Requirements.
- 13.1.6 During the course of the audit conducted in furtherance of Clause 13.1.3, if the SPV discovers that any property, associated equipment or fixture forming part of the Project facilities has been damaged due to any act, omission or default attributable to the Operator or its personnel (other than normal wear and tear caused in the ordinary course), the Operator shall be solely responsible for undertaking any corrective maintenance, replacement/renewal or rectification of defect of such damaged property, associated equipment or fixture, to bring back it to the same or improved condition as was noted in audit conducted in the previous month.

13.2 Maintenance Manual

- 13.2.1 Not later than 90 (ninety) days prior to COD, the Operator shall, in consultation with the SPV, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular maintenance of the Project in conformity with the Safety Requirements and Good Industry Practice, and shall provide 2 (two) copies thereof to the SPV. The Maintenance Manual shall be revised and updated once every 3 (three) years and upon achieving the COD of the Phase II Facilities and the provisions of this Clause 13.2 shall apply, *mutatis mutandis*, to such revision.
- 13.2.2 Without prejudice to the provisions of Clause 13.2.1, the Maintenance Manual shall, in particular, include provisions for operation and maintenance of the Project Assets and shall provide for routine maintenance.

13.3 Maintenance Programme

- 13.3.1 Not later than 45 (forty five) days prior to the beginning of each Contract Year during the Term, the Operator shall provide to the SPV, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") of the Real Property, Fixture(s) and Furniture (as defined under Schedule B) comprising the Project Facilities to comply with the Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:
- (a) routine maintenance schedule;
 - (b) arrangements and procedures for carrying out urgent repairs;
 - (c) criteria to be adopted for deciding maintenance needs;
 - (d) intervals and procedures for carrying out inspection of all elements of the Project;
 - (e) intervals at which the Operator shall carry out periodic maintenance;
 - (f) arrangements and procedures for carrying out safety related measures; and
 - (g) intervals for Major Maintenance Works and the scope thereof.
- 13.3.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, shall review the same and convey its comments to the Operator with particular reference to its conformity with the Maintenance Manual and Safety Requirements.
- 13.3.3 The Operator may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clause 13.2.1 shall apply *mutatis mutandis* to such modifications.

13.4 Overriding powers of the SPV

- 13.4.1 If in the reasonable opinion of the SPV, the Operator is in material breach of its obligations under this Agreement and, in particular, the Maintenance Manual and Safety Requirements, and such breach is causing or likely to cause material hardship or danger to the Users, the SPV may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Operator to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.
- 13.4.2 In the event that the Operator, upon notice under Clause 13.4.1, fails to rectify or remove any hardship or danger within a reasonable period, the SPV may exercise overriding powers under this Clause 13.4.2 and take over the performance of any or all the obligations of the Operator 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 SPV shall be of no greater scope and of no longer duration than is reasonably required hereunder;

- 13.7.3 In the event of a national emergency, civil commotion or any other act specified in Clause 22.3, the SPV may take over the performance of any or all the obligations of the Operator to the extent deemed necessary by it, and exercise such control over the Project or give such directions to the Operator as may be deemed necessary; provided that the exercise of such overriding powers by the SPV 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 powers by the SPV. For the avoidance of doubt, the consequences of such action shall be dealt in accordance with the provisions of Article 22.

13.5 Excuse from performance of obligations

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

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

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

13.6 Advertising on the Site

The Operator shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding violates Applicable Laws.

ARTICLE 14: MONITORING OF OPERATION AND MAINTENANCE

14.1 Quarterly status reports

During the Term, the Operator shall, no later than 7 (seven) days after the close of each quarter, furnish to the SPV a quarterly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Manual and Safety Requirements, and shall promptly give such other relevant information as may be required by the SPV. This report should also include a list of all future bookings (area-wise) for the Project Facility.

14.2 Inspection

The SPV shall inspect the Project at regular intervals and may require the Operator to carry out any routine maintenance works in accordance with the Maintenance Manual and the Safety Requirements.

14.3 Monthly Revenue Statement

During the Term, the Operator shall furnish to the SPV within 7 (seven) days of completion of each month, a statement of Revenue substantially in the form set forth in Schedule-F (the "**Monthly Revenue Statement**").

14.4 Reports of unusual occurrence

14.4.1 The Operator shall send to the SPV by facsimile or email, a report stating accidents and unusual occurrences if any. A monthly summary of such reports shall also be sent within 3 (three) days of the closing of each month, as the case may be. For the purposes of this Clause, accidents and unusual occurrences on the Project shall include:

- (a) death or injury to any person;
- (b) damaged or dislodged fixed equipment;
- (c) any obstruction on the Project, which results in slowdown of the services being provided by the Operator;
- (d) disablement of any equipment during operation;
- (e) communication failure affecting the operation of the Project;
- (f) smoke or fire;
- (g) flooding of Project; and
- (h) such other relevant information as may be required by the SPV.

ARTICLE 15: SAFETY REQUIREMENTS AND MEDICAL AID

15.1 Safety Requirements

- 15.1.1 The Operator shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Operator shall develop, implement and administer a surveillance and safety programme in consultation with SPV for providing a safe environment on or about the Project within 6 (six) months of COD and revise this within 6 (six) months of COD of Future Development, and shall comply with the safety requirements set forth in Schedule-G (the "**Safety Requirements**").
- 15.1.2 The SPV may appoint an experienced and qualified firm or organisation (the "**Safety Consultant**") for carrying out safety audit of the Project in accordance with the Safety Requirements at most once every 3 contract years after COD, and shall take all other actions necessary for securing compliance with the Safety Requirements.
- 15.1.3 All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Operator to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

ARTICLE 16: TRANSFER ON EXPIRY OF THE TERM

16.1 General Scope of Transfer

16.1.1 In case of expiry of the Term by efflux of time or early Termination of this Agreement, the Operator shall, on the date immediately following the date of expiry of the Term, hand over to the SPV, free from all encumbrances and encroachment, the Project Facilities, Project Assets, Project Agreements, Applicable Permits, guarantees and all other movable and immovable assets, structures created over the Project Site.

16.2 Specific obligations relating to Transfer

16.2.1 Without prejudice to the provisions contained in Clause 16.1 or Clause 16.3, 6 (six) months prior to the Transfer Date, the Operator shall provide written statements in relation to the following:

- (a) A full list of all employees of the Operator engaged in the O&M of the Operator O&M Facilities, containing details of claims from any such employees;
- (b) An updated plan of the Project showing all buildings or other structures located thereon and the routes of all roads, service access and utility systems, together with any material third party rights-of-way or easements;
- (c) Copies of all consents, licenses, approvals and agreements given or received in relation to the Project;
- (d) A full list of all contracts entered into by the Operator pertaining to the Project, which the SPV have agreed shall be permitted to continue beyond the Transfer Date, shall be provided together with a note of any claims under such contracts. The Operator shall provide evidence that all other contracts have been duly terminated and that no liability is attached with respect to such contracts;
- (e) A list of various equipment and IT systems used for the O&M of the Project, together with their description and master passwords where applicable;
- (f) List of all insurance policies undertaken by the Operator pertaining to the Project.

16.2.2 Subject to fulfilment of the conditions laid down in Clause 16.2.1 (“**Handback Requirements**”), a survey shall be conducted by an independent consultant. The independent consultant will be decided out of a set of consultants empaneled for this role by the SPV.

16.2.3 The Operator may short-list any 3 consultants out of the empaneled consultants in this regard. The SPV shall then choose any 1 (one) of the 3 consultants chosen by the Operator (“**Handback Consultant**”) and any deficiencies from the Handback Requirements described above will be listed by the Handback Consultant. Any deficiency that is not due to normal wear and tear in normal course of the usage of the facility will be repaired by the Operator within a period of 60 (sixty) days of the end of Term

16.3. Operator’s Obligations

16.3.1 Without prejudice to the provisions contained in Clause 16.1 and Clause 16.2, the transactions to be consummated and the formalities to be completed by the Parties on the Transfer Date shall be the following:

- (a) the Operator shall hand over fully vacant, peaceful, unencumbered and un-encroached possession of all the Project Assets, the Site and the Project to the SPV;
- (b) transfer all its rights titles and interests in the assets comprised in the Project, the Project Site and the Project Assets which are required to be transferred to the SPV in accordance with this Agreement and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard at its cost;
- (c) hand over to the SPV all documents including as built drawings, manuals and records relating to operation and maintenance of the Project and the Project Assets;

- (d) transfer technology and up-to-date know-how (provide training to the employee's SPV, if required) relating to O&M of the Project Assets and/or the Project;
- (e) transfer or cause to be transferred to the SPV any Project Agreements and Permits which are (i) valid and subsisting, (ii) capable of being transferred to the SPV and (iii) those the SPV has chosen to take over, and cancel or cause to be cancelled such Project Agreements not transferred to the SPV, more specifically given under Clause 22; and
- (f) at its cost remove from the Site all such moveable and immovable assets procured by the Operator which are not taken over by or transferred to the SPV.

16.4 Operator's Responsibility

The Operator's employees shall be the sole responsibility of the Operator. The SPV will be under no obligation to continue employment of Operator's employees

16.5 SPV's Obligations

The SPV may pay the amounts due and payable to the Operator in accordance with the provisions of this Agreement.

16.6 Risk

Until transfer in accordance with this Clause 16, the Project and the Project Assets shall remain at the sole risk of the Operator except for any loss or damage caused to or suffered by the Operator due to any act or omission or negligence on the part of the SPV under this Agreement.

16.7 Handback Performance Security

To secure the performance of its obligations under Article 16, the Operator shall 2 (two) years prior to the Transfer Date, provide to the SPV, an irrevocable and unconditional guarantee from a Bank for a sum equivalent to Annual License Fee of the Contract Year that is 2 (two) years prior to the end of the term, in the form set out in Schedule [H] ("**Handback Performance Security**"). This Handback Performance Security will be valid till the transfer of the Project Facility to SPV and completion of all repair works carried out as per Clause 16.2.3

ARTICLE 17: ANNUAL LICENSE FEE

17.1 Annual License Fee

17.1.1 Notwithstanding anything to the contrary contained herein, the Operator shall, commencing from the COD, be liable to pay to the SPV, on an annual basis, an amount (the “**Annual Licence Fee**”) equal to the greater of:

- (a) 20% (twenty percent) of the Gross Revenues earned from operating and managing the Project Facilities; and
- (b) The minimum annual guaranteed amount quoted by the Applicant pursuant to this RfP (the “**MAG**”). The MAG shall be revised upward by the WPI³ for each Contract Year commencing from the fourth Contract Year until the expiry of the Agreement.

17.1.2 Notwithstanding what is stated in Clause 17.1.1 above, the Operator shall be liable to pay to the SPV:

- (a) 25% (twenty five percent) of the MAG for the first Contract Year; and
- (b) 50% (fifty percent) of the MAG for the second Contract Year; and
- (c) The MAG for the third Contract Year.

17.1.3 The Annual License Fee shall be payable in 4 (four) quarterly installments, each installment to be paid at the end of each quarter of each Contract Year during the Operations Period.

- (a) The Operator shall cause the Escrow Bank to make payment to SPV in advance on or prior to the 7th (seventh) day of end of each quarter by cheque or bank transfer, RTGS drawn in favour of SPV.
- (b) If SPV does not receive the payment due hereunder by the due date provided herein, the amount owed shall bear interest for the period starting on and including the due date for payment and ending on but excluding the date when payment is made calculated at 15% (fifteen percent) per annum.

17.1.4 Starting from the second Contract Year, the SPV shall, determine the Annual Licence Fee payable during the previous Contract Year on the basis of the Gross Revenues during the previous Contract Year basis audited statements submitted by Operator

- (a) In the event that the Annual License Fee payable for the previous Contract Year determined through such reconciliation is greater than payments made by the Operator to the SPV in the previous Contract Year, the Operator shall pay the difference to the SPV at the time of making the payment of the first quarter of the current Contract Year, failing which interest at the rate stipulated above shall be levied.
- (b) In the event that the Annual License Fee payable for the previous Contract Year determined through such reconciliation is lower than payments made by the Operator to the SPV in the previous Contract Year, the SPV shall adjust the difference to the Operator, at the time of collecting payment of the first quarter of the current Contract Year, failing which interest at the rate stipulated above shall be levied

17.2 Annual License Fee post development of Future Development

³ “**WPI**” means the Wholesale Price Index for all commodities as published by the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI of the last completed Financial Year.

In the event the SPV undertakes the Future Development as specified in Clause 2.2, The Annual Licence Fee will be revised to an amount equal to the greater of:

- (a) 20% (twenty percent) the Gross Revenues earned from operating and managing the Project Facilities (inclusive of the Future Development); and
- (b) The MAG, as increased by the formula below:

$$L_n = \left[L_c \times \frac{T_n}{T_c} \right]$$

Where:

L_n = Revised MAG

L_c = MAG in the Contract Year prior to the year in which the Future Development is commissioned (or the preceding Contract Year, if the Future Development is commissioned on an anniversary of the COD)

T_n = Total built-up area after commissioning of the Future Development

T_c = Total built-up area prior to commissioning of the Future Development

If the Future Development is commissioned on a date which is different from COD, the increase in MAG will be pro-rated.

Illustration⁴		
Contract Year	MAG	Rationale
1	Rs 25.00	25% of MAG
2	Rs 50.00	50% of MAG
3	Rs 100.00	MAG
4	Rs 105.00	MAG escalated by 5%
5	Rs 110.25	MAG for the 4 th Contract Year escalated by 5%
Future Development is commissioned on the 5 th anniversary of the COD		
6	Rs 276.05	MAG for the 5 th Contract Year revised by the above formula
7	Rs 289.85	MAG for the 6 th Contract Year escalated at 5%
8	Rs 304.34	MAG for the 7 th Contract Year escalated at 5%
9	Rs 319.56	MAG for the 8 th Contract Year escalated at 5%
10	Rs 335.54	MAG for the 9 th Contract Year escalated at 5%
11	Rs 352.32	MAG for the 10 th Contract Year escalated at 5%
12	Rs 369.93	MAG for the 11 th Contract Year escalated at 5%
13	Rs 388.43	MAG for the 12 th Contract Year escalated at 5%
14	Rs 407.85	MAG for the 13 th Contract Year escalated at 5%
15	Rs 428.24	MAG for the 14 th Contract Year escalated at 5%

⁴ Note: To be confirmed

<i>Assumptions</i>	<ul style="list-style-type: none"> • MAG = Rs. 100 • WPI (WPI has been kept constant for the Term) = 5% • Total built-up area prior to commissioning of the Future Development = 130,000 sq. m. • Total built-up area after commissioning of the Future Development = 310,000 sq. m.
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17.3 Consultancy Fee during Design Phase

In consideration of the services provided by the Operator during the Design Phase, the SPV shall pay to the Operator an annual consultancy fee (the “**Annual Consultancy Fee**”) of an amount equal to Rs. 5,00,00,000 (Rupees Five Crore), exclusive of all applicable taxes. Such Consultancy Fee shall be payable to Operator on a quarterly basis.

The Operator shall be entitled to raise an invoice on a quarterly basis in respect of the services performed in the previous quarter. Each invoice shall set out details of deployment of the Key Personnel (including time-sheets and attendance records, which shall have to be certified by the SPV or any agency appointed by SPV) and other supporting documents.

Unless the SPV has raised a dispute in respect of any amounts claimed under an invoice, the SPV shall be required to make payment in respect thereof within 60 (sixty) days of having received the invoice complete in all particulars with relevant supporting documents. The SPV has no obligation to make, and may withhold, any payment to the Operator at any time when the Operator is in material breach of any term or provision of this Agreement. On the payment date next succeeding the date on which all such material breaches have been remedied, the SPV shall make the payments withheld due to such breaches, less any amounts paid by or on behalf of the SPV in an effort to remedy any such breaches or the costs incurred by the SPV as a result thereof.

ARTICLE 18: REVENUE AND OPERATIONAL STANDARDS

18.1 Project Revenues

- 18.1.1 Effective from the COD, during the Operations Period till the Transfer Date, the Operator shall be entitled to determine, revise, charge, demand and collect Revenue from Users of the Project Facilities.
- 18.1.2 Notwithstanding the provisions of Clause 18.1.1, in the event the SPV is notified, or is made aware, or discovers on its own accord that that the Operator has demanded, collected, charged or diverted the Revenue, or any part thereof, through any of its Affiliates/subsidiaries/parent company/any other third party (“**Fee Diversion**”) that is attributable to the facilities being provided (revenues attributable to the facilities as defined in Gross Revenues), then the SPV shall be entitled to (a) encash a part or the whole Performance Security furnished by the Operator forthwith and require the Operator to replenish the Performance Security, and/or (b) terminate this Agreement as an Operator event of default along with encashment of the Performance Security.
- 18.1.3 In addition to the indemnity obligations of the Operator under Clause 13, the Operator will indemnify, defend, save and hold harmless the SPV and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator due to any Fee Diversion.

18.2 Operational Standards

- 18.2.1 Effective from 3 (three) years after the COD, the Operator shall ensure that the Project achieves the following minimum operational standards:

- (i) Minimum Occupancy over a contract year as follows:-

Year 3 after COD	Year 4 after COD	Year 5 and onwards after COD
10%	15%	20%

- (ii) at least 10 (ten) large exhibitions should be held at the Project every year. For the sake of clarity, a large exhibition would be one with (i) sold space greater than 10,000 sq. mts. ;(ii) at least 10 (ten) conventions should have been held every year with more than 1000 (one thousand) delegates attending each such convention; and (iii)at least 5 (five) international conventions should have been held every year at the Project Facilities. For the sake of clarity, an international convention would be one in which more than 40% (forty percent) of the delegates/participants are from countries other than India with a minimum attendance of 300 (three hundred) delegates.

- 18.2.2 The operational standards mentioned in Clause 18.2.1 above shall initially be applicable to the Phase I Facilities. Subsequent to the date of commercial operation of the Future Development, the area of the Future Development shall not be taken into account for calculating minimum occupancy for the purposes of Clause 18.2.1 (ii) above for a period of 2 (two) years post the date of commercial operation of the Future Development. It is hereby clarified that upon completion of 2 (two) years from the date of commercial operation of the Future Development, minimum occupancy for the entire Project (including the Phase II Facility) will have to be achieved as below

Year 3 after COD of Future Development	Year 4 after COD of Future Development	Year 5 and onwards after COD of Future Development
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10%	15%	20%
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18.2.4 At the end of each Contract Year, a performance fee (“**Performance Fees**”) will be levied by the SPV on the Operator. The formula for calculating the Performance Fee will be as follows:

$$\text{Performance Fee} = 0.05 * (4 \text{ [minus] the number of targets that have been achieved for that Contract Year}) * (\text{Annual License Fee}) \text{ paid in that Contract Year}$$

18.2.5 The Performance Fee will be realized by the SPV from the Performance Security submitted by the Operator under Clause 9.2. In the event the Operator fails to meet either of the two operational standards outlined under Clause 18.2.1 (i) and (ii) for 2 (two) consecutive years, the SPV shall have the right but not obligation to terminate this Agreement.

18.3 Usage of the Project Facilities for Mega Government Events

18.3.1 Subject to other terms of this Clause 18.3, the Operator shall, on a priority basis, provide free usage of the Project Facilities to the Government of India/Central Government or any ministry or authority under the direct administrative control or aegis of the Central Government (“**Central Government Authority**”), at a discounted rate of 10% (ten percent) applied to the standard rental prices of the Project Facilities (as applicable during the time), to carry out any Mega Government Event for a cumulative period not exceeding 10 (ten) days in every financial year during the term of this Agreement.

18.3.2 The period of usage of the Project for 10 (ten) days in a financial year, as specified above, shall be confined to the respective financial year only. The balance of unutilized days in such financial year shall stand automatically and unconditionally lapsed. The Parties agree that the Operator will provide the SPV with a schedule of the rental price/usage fee for the Project Facilities on annual basis, and will ensure that such rental price/usage fee is published on its website and updated from time to time.

18.3.3 Upon a request made by the Central Government Authority for the usage of the Project Facilities for conducting a Mega Government Event under Clause 18.3.1 (“**Mega Government Event Request Notice**”), the Operator shall accommodate such Mega Government Event Request Notice on a first come first serve availability basis. For the sake of clarity, in the event the Project Facilities has been reserved by any third party on the days indicated under the Mega Government Event Request Notice (“**Requested Dates**”), the Operator shall not be required to cancel the booking of any third party on the Requested Dates.

18.3.4 Notwithstanding the provisions of Clause 18.3.3, the Operator would give preference to the Central Government Authority and be obligated to reserve Project Facilities in furtherance of any Mega Government Event Request Notice if (a) no prior bookings have been made by any third party on the Requested Dates, or (b) no written agreement/arrangement has been entered into and no monetary advance booking amount has been received by the Operator from any third party for any event on the Requested Dates.

18.3.5 Any usage of the Project Facilities by the Central Government Authority under this Clause 18.3 shall exclude, telecommunication charges, vending machine facilities, advertising rights, entertainment events or performances, Wi-Fi and internet usage charges, decoration/ temporary facility arrangements, utility charges (including but not limited to electricity and water charges), cleaning charges, food and beverages or any other facilities of a like nature provided by the Operator, which shall be charged on actual and paid by the Central Government Authority.

18.3.6 It is hereby agreed that in order to ensure smooth co-ordination between the Parties with respect to allocation and scheduling dates for usage of the Project Facilities by any Central Government

Authority in accordance with this Clause 18, the Operator will provide the SPV a schedule of the booking status of the Project Facilities indicating the availability and schedule of booking of the Project Facilities for the next 2 (two) calendar years on a monthly basis.

ARTICLE 19: ESCROW ACCOUNT

19.1 Escrow Account

19.1.1 The Operator shall, prior to COD, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read with the Escrow Agreement.

19.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Operator, the SPV and the Escrow Bank, which shall be substantially in the form set forth in Schedule-I.

19.2 Deposits into Escrow Account

The Operator shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

- (a) all monies received from any source in relation to the Project including from Banks, insurance and shareholders;
- (b) all Revenue and any other revenues from or in respect of the Project, including the proceeds of insurance claims; and
- (c) all payments by the SPV, made after deduction of any outstanding Annual License Fee; and
- (d) Termination Payments.

19.3 Withdrawals during the Term

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

- (a) all taxes and statutory payments due and payable by the Operator in respect of the Project Facilities;
- (b) Annual license Fee due and payable to the SPV
- (c) any other payments required to be made under this Agreement; and
- (d) O&M Expenses in accordance with Good Industry Practice;
- (e) monthly proportionate provisions of any debt due and balance, if any, in accordance with the instructions of the Operator:

19.3.2 The Operator shall not in any manner modify the order of payment specified in Clause 19.3.1 except with the prior written approval of the SPV.

19.4 Withdrawals upon Termination

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

- (a) all taxes due and payable by the Operator in respect of the Project Facilities;
- (b) Annual License Fee due and payable to the SPV;

- (c) all payments and damages relating to the liability for defects and deficiencies payable by the Operator to the SPV set forth in Article 27;
- (d) any other payments required to be made under this Agreement; and
- (e) O&M Expenses;
- (f) O&M Expenses and other costs and expenses incurred by the SPV in accordance with the provisions of this Agreement, and certified by the SPV as due and payable to it;
- (g) monthly proportionate provisions of any debt due;
- (h) balance, if any, in accordance with the instructions of the Operator:

Provided that no appropriations shall be made under Sub-clause (i) of this Clause 19.4.1 until a Vesting Certificate has been issued by the SPV under the provisions of Article 26.

19.4.2 The provisions of this Article 19 and the instructions contained in the Escrow Agreement shall remain in full force and effect until the obligations set forth in Clause 19.4.1 have been discharged.

ARTICLE 20: INSURANCE

20.1 Insurance during the Term

The Operator shall effect and maintain at its own cost, during the Term, such insurances for such maximum sums as may be required under the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice to cover third party claims and Non Political Event (the "**Insurance Cover**"), covering the following:

(a) Design Phase

The Operator shall, at its cost and expense, purchase and maintain during the Design Phase, such insurance policies as are necessary, including but not limited to the following:

- (i) insurance that may be necessary to protect the Operator, its employees and its assets (against loss, damage or destruction at replacement value);
- (ii) The Operator shall provide to the SPV, within 30 (thirty) days of the date of this Agreement, evidence of professional liability insurance maintained by its consultants to cover the risk of professional negligence in the design of works. The professional liability coverage shall be for a sum of not less than the 2 (two) years of Annual Consultancy Fees - Rs.10,00,00,000/- (Rupees Ten Crore only) and shall be maintained until the end of the Design Phase.
- (iii) Third Party liability insurance with a minimum coverage, for Rs.10,00,000/- (Rupees Ten Lakhs only) for the Design Phase; and
- (iv) Third party motor vehicle liability insurance as required under Motor Vehicles Act, 1988 in respect of motor vehicles operated in India by the Operator during the Design Phase;

(b) Operations Period

- (i) Professional Liability Insurance including coverage for errors and omissions caused by Operator's negligence, breach in the performance of its duties under this Contract from an insurance company permitted to offer such policies in India, for the Design Phase ,(a) For an amount not exceeding total payments for Consultancy made or expected to be made to the Operator hereunder or (b) the proceeds, the Operator may be entitled to receive from any insurance maintained by the Operator to cover such a liability, whichever of (a) or (b) is higher. The indemnity limit in terms of "Any One Accident" (AOA) and "Aggregate limit on the policy period" (AOP) should not be less than the amount stated in the contract. In case of joint venture or 'in association', the policy should be in the name of joint venture / in association entity and not by the individual partners of the joint venture/association
- (ii) Employer's liability and workers' compensation insurance shall be in respect of the personnel of the Operator in accordance with the relevant revisions of the Applicable Law, as well as, with respect to such Personnel, any such life, health, accident, travel or other insurance as may be appropriate; and all insurances and policies should start from the date of commencement of services and remain effective as per relevant requirements of this Agreement;
- (iii) any other insurance that may be necessary to protect the Operator and its employees, including all Force Majeure Events that are insurable and not otherwise covered in items (i) to (iii).

The Operator shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the SPV as a consequence of any act or omission of the Operator during the Design Phase. The Operator shall ensure that in each insurance policy, the SPV shall be a co-insured and beneficiary and that the insurer shall pay the proceeds of insurance into the Escrow Account.

20.2 Notice to the SPV

Not later than 45 (forty-five) days prior to commencement of the Term, the Operator shall by notice furnish to the SPV, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 20. Within 30 (thirty) days of receipt of such notice, the SPV may require the Operator to effect and maintain such other insurances as may be necessary pursuant hereto and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply

20.3 Evidence of Insurance Cover

All insurances obtained by the Operator in accordance with this Article 20 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Operator shall furnish to the SPV, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Operator to the SPV.

20.4 Remedy for failure to insure

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

20.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Operator pursuant to this Article 20 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the SPV, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers and underwriters and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

20.6 Operator's waiver

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

20.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Operator by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in

Clause 20.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the financing agreements (if any).

ARTICLE 21: ACCOUNTS AND AUDIT

21.1 Audited accounts

- 21.1.1 The Operator shall maintain books of accounts recording all its receipts (including all Revenue and other revenues derived/collected by it from or on account of the Project and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Operator shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts shall form the basis of payments by either Party under this Agreement. The SPV or its appointed representative shall have the right to inspect the records of the Operator during office hours and require copies of relevant extracts of books of accounts duly certified by the Auditors to be provided to the SPV for verification of basis of payments and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 21.1.2 The Operator shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the SPV its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and Exchange Board of India for publication of quarterly results by the companies listed on a stock exchange.
- 21.1.3 On or before the last day of June each Year, the Operator shall provide to the SPV, for the preceding Contract Year, the statements along with a statement duly audited by its Statutory Auditors giving summarised information on (a) the number of events conducted at the Project Facilities, (b) space in sq. mts. Sold at each event, (c) number of attendees at each such event and (d) such other information as the SPV may reasonably require.

21.2 Certification of claims by Statutory Auditors

Any claim or document provided by the Operator to the SPV in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. In the event of there being any difference or dispute in respect thereof, such Dispute shall be resolved by recourse to the Dispute Resolution Procedure. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business including the submission of Monthly Revenue Statements under Clause 14.3.

ARTICLE 22: FORCE MAJEURE

22.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "Force Majeure Event" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 22.2, 22.3 and 22.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

22.2 Non-Political Event

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

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Operator, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in a Contract Year, and not being an Indirect Political Event set forth in Clause 22.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Operator in any proceedings for reasons other than (i) failure of the Operator to comply with any Applicable Law or Applicable Permit, or (n) 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 SPV;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

22.3 Indirect Political Event

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

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;
- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty four) hours and exceeding an aggregate period of 7 (seven) days in a Contract Year;

- (c) any civil commotion, boycott or political agitation which prevents collection of Revenue by the Operator for an aggregate period exceeding 7 (seven) days in a Contract Year;
- (d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor;
- (e) any Indirect Political Event that causes a Non-Political Event; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

22.4 Political Event

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

- (a) Change in Law, only if consequences thereof cannot be dealt with under and in accordance with the provisions of Article 29;
- (b) compulsory acquisition in national interest or expropriation either directly or indirectly of any Project Assets or rights of the Operator or of the Contractors;
- (c) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Operator or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Operator's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Operator by or on behalf of such Contractor; or
- (e) any event or circumstance of a nature analogous to any of the foregoing.

22.5 Duty to report Force Majeure Event

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

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 22 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

22.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon

as reasonably practicable, and in any event not later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

22.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 22.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

22.6 Effect of Force Majeure Event on the Agreement

22.6.1 Upon the occurrence of any Force Majeure Event prior to COD, the period set forth in Clause 12.1 for achieving COD shall be extended by a period equal in length to the duration of the Force Majeure Event.

22.6.2 If any Force Majeure Event occurs after COD, whereupon the Operator is unable to operate and manage the Project despite making best efforts or it is directed by the SPV to suspend the operation and maintenance activities thereof during the subsistence of such Force Majeure Event, the Term shall be extended by a period, equal in length to the period during which the Operator was prevented from operating and managing the Project and collecting Revenue on account thereof;

22.7 Allocation of costs arising out of Force Majeure

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

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

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof; or
- (b) upon occurrence of an Indirect Political Event or a Political Event, all Force Majeure Costs attributable to such Indirect Political Event or Political Event, as the case may be, shall be reimbursed by the SPV to the Operator.

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

22.7.3 Save and except as expressly provided in this Article 22, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

22.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 120 (one hundred and twenty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever save as provided in this Article 22, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination

Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

22.9 Termination Payment for Force Majeure Event

22.9.1 If Termination is on account of a Non-Political Event, the SPV shall return the Performance Security to the Operator provided that there are no outstanding claims owed by the Operator to the SPV or any Person in relation to this Agreement. It is clarified that the Selected Bidder will have the option to wind up the Operator and appropriate the proceeds from such winding up.

22.9.2 If Termination is on account of an Indirect Political Event, the SPV shall make a Termination Payment to the Operator:

- (a) an amount equivalent to the preceding Contract Year's profits as compensation; and
- (b) the reasonable cost, as determined by the Handback Consultant, of the Plant and Materials procured by the Operator and transferred to the SPV for use in Maintenance, only if such Plant and Materials are in conformity with the Specifications and Standards.

22.9.3 If Termination is on account of a Political Event, the SPV shall make a Termination Payment to the Operator of an amount that would be payable under Clause 25.3.2 as if it were an SPV Default.

22.10 Dispute resolution

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

22.11 Excuse from performance of obligations

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

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

ARTICLE 23: COMPENSATION FOR BREACH OF AGREEMENT

23.1 Compensation for default

- 23.1.1 In the event of the Operator being in material default or breach of this Agreement, it shall pay to the SPV by way of compensation, all direct costs suffered or incurred by the SPV as a consequence of such material default, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 23.1 for any breach or default in respect of which Damages are expressly specified and payable under this Agreement.
- 23.1.2 In the event of the SPV being in material default or breach of this Agreement at any time after COD, it shall pay to the Operator by way of compensation, all direct costs suffered or incurred by the Operator as a consequence of such material default within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include interest payments on debt, O&M Expenses and all other costs directly attributable to such material default but shall not include loss of Revenues or debt repayment.

23.2 Compensation to be in addition

Compensation payable under this Article 23 shall be in addition to, and not in substitution for, or derogation of Termination Payment, if any.

ARTICLE 24: SUSPENSION OF OPERATOR'S RIGHTS

24.1 Suspension upon Operator Default

Upon occurrence of an Operator Default, the SPV shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Operator under this Agreement including the Operator's right to collect Revenue, pursuant hereto, and (ii) exercise such rights itself or authorize any other person to exercise the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith upon issue of notice by the SPV to the Operator and may extend up to a period not exceeding 120 (one hundred and twenty) days from the date of issue of such notice; provided that upon written request from the Operator, the SPV shall extend the aforesaid period of 120 (one hundred and twenty) days by a further period not exceeding 90 (ninety) days.

24.2 SPV to act on behalf of Operator

24.2.1 During the period of Suspension, the SPV shall, on behalf of the Operator, collect all Revenue and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The SPV shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 19.3.

24.2.2 During the period of Suspension hereunder, all assets and liabilities in relation to the Project shall continue to vest in the Operator and all things done or actions taken including expenditure incurred by the SPV for discharging the obligations of the Operator under and in accordance with this Agreement and the Project Agreements shall be deemed to have been done or taken for and on behalf of the Operator and the Operator undertakes to indemnify the SPV for all costs incurred during such period.

24.3 Revocation of Suspension

24.3.1 In the event that the SPV shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Operator under this Agreement.

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

24.4 Termination

Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 120 (one hundred and twenty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 24.1, the Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice had been issued by the SPV upon occurrence of an Operator Default.

ARTICLE 25: TERMINATION

25.1 Termination for Operator Default

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

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 or the Performance Security has not been renewed in accordance with Clause 9.2 and the Operator fails to replenish or provide fresh Performance Security within a Cure Period of 15 (fifteen) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Operator fails to cure, within a Cure Period of 60 (sixty) days, the Operator Default for which whole or part of the Performance Security was appropriated;
- (c) the Operator commits any Fee Diversion in terms of Clause 18.1.2;
- (d) the Operator abandons or manifests intention to abandon the operation of the Project without the prior written consent of the SPV;
- (e) the Operator fails to operate and manage the Project Facilities in accordance with the terms of this Agreement;
- (f) the Operator is in breach of the terms of the Maintenance Manual and/or the Safety Requirements;
- (g) the Operator has failed to make any payment to the SPV within the period specified in this Agreement;
- (h) an Escrow Default has occurred and the Operator fails to cure the default within a Cure Period of 15 (fifteen) days;
- (i) a breach of any of the Project Agreements by the Operator has caused a Material Adverse Effect;
- (j) the Operator creates any Encumbrance in breach of this Agreement;
- (k) the Operator repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Operator under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Operator, and such transfer causes a Material Adverse Effect;
- (n) an execution levied on any of the assets of the Operator has caused a Material Adverse Effect;
- (o) the Operator is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Operator or for the whole or material part of its assets that has a material bearing on the Project;

- (p) the Operator has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the SPV, a Material Adverse Effect;
- (q) a resolution for winding up of the Operator is passed or any petition for winding up of the Operator is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Operator is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Operator are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Operator under this Agreement and the Project Agreements; and provided that:
 - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
 - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Operator as at COD; and
 - (iii) each of the Project Agreements remains in full force and effect;
- (r) any representation or warranty of the Operator herein contained which is, as of the date hereof, found to be materially false;
- (s) the Operator submits to the SPV any statement which has a material effect on the SPV's rights, obligations or interests and which is false in material particulars;
- (t) the Operator has failed to discharge any obligation, failure of which results in Termination under this Agreement; or
- (u) the Operator commits a default in complying with any other provision of this Agreement if such default causes a Material Adverse Effect on the SPV.

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

25.2 Termination for SPV Default

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

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

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

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

25.3 Termination Payment

25.3.1 Upon Termination on account of an Operator Default during the Term, the Operator will not be entitled to receive any Termination Payments from the SPV. Additionally, it is clarified that upon the occurrence of an Operator Default, the SPV shall be entitled to encash and appropriate entire amount of the Performance Security in accordance with the provisions of Article 9.

25.3.2 Upon Termination on account of an SPV Default, the SPV shall pay to the Operator by way of Termination Payment an amount equal to:

- (a) 1/4th of the annual Gross Revenue of the preceding Contract Year; and
- (b) shall forthwith return the Performance Security to the Operator provided that there are no outstanding claims owed by the Operator to the SPV or any Person in relation to this Agreement.

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

25.4 Other rights and obligations of the SPV

Upon Termination for any reason whatsoever, the SPV shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Operator and any person claiming through or under the Operator from entering upon the Site or any part of the Project;
- (d) require the Operator to comply with the Divestment Requirements set forth in Clause 26.1; and
- (e) succeed upon election by the SPV, without the necessity of any further action by the Operator, to the interests of the Operator under such of the Project Agreements as the SPV may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the SPV elects to succeed to the interests of the Operator. For the avoidance of doubt, it is hereby agreed, and the Operator hereby acknowledges, that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between

the Operator and such Contractors, and the SPV shall not in any manner be liable for such sums. It is further agreed that in the event the SPV elects to cure any outstanding defaults under such Project Agreements, the amount expended by the SPV for this purpose shall be deducted from the Termination Payment.

25.5 Survival of rights

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

ARTICLE 26: DIVESTMENT OF RIGHTS AND INTEREST

26.1 Divestment Requirements

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

- (a) notify to the SPV forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project / Project Facilities free and clear of all Encumbrances;
- (c) cure all Project Assets of all defects and deficiencies so that the Project is compliant with the terms of the Maintenance Manual and Safety Requirements; provided that any Project Facilities still under construction shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver relevant records and reports pertaining to the Project and its design, engineering, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date;
- (e) transfer and/ or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the SPV may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Operator in the Project, including the right to receive outstanding insurance claims to the extent due and payable to the SPV, absolutely unto the SPV or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Operator in the Project, free from all Encumbrances, absolutely unto the SPV or to its nominee.

26.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to such Termination, the Handback Consultant shall verify, after giving due notice to the Operator of the time, date and venue of such verification, compliance by the Operator with the terms of the Maintenance Manual and Safety Requirements, and if required, cause appropriate tests to be carried out at the Operator's cost for this purpose. Defaults, if any, in the Maintenance Manual and Safety Requirements shall be cured by the Operator at its cost and the provisions of Article 27 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 26.

26.3 Vesting Certificate

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

26.4 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Operator upon and after Termination.

26.5 Divestment costs etc.

- 26.5.1 The Operator shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Operator in the Project in favour of the SPV upon Termination save and except that all stamp duties payable on any deeds or Documents executed by the Operator in connection with such divestment shall be borne by the SPV.
- 26.5.2 In the event of any dispute relating to matters covered by and under this Article 26, the Dispute Resolution Procedure shall apply.

ARTICLE 27: DEFECTS LIABILITY AFTER TERMINATION

27.1 Liability for defects after Termination

The Operator shall be responsible for all defects and deficiencies in the Project for a period of 60 (sixty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Handback Consultant in the Project during the aforesaid period. In the event that the Operator fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the SPV in this behalf, the SPV shall be entitled to get the same repaired or rectified at the Operator's risk and cost so as to make the Project conform to the Maintenance Manual and Safety Requirements. All costs incurred by the SPV hereunder shall be reimbursed by the Operator to the SPV within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the SPV shall be entitled to recover the same from the Escrow Account.

27.2 Retention in Escrow Account

27.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 27.2, a sum equal to the Performance Security shall be retained in the Escrow Account for a period of 90 (ninety) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 27.1.

27.2.2 Without prejudice to the provisions of Clause 27.2.1, the Handback Consultant shall carry out an inspection of the Project at any time between 150 (one hundred and fifty) days and 120 (one hundred and twenty) days prior to the Termination and if it recommends that the status of the Project is such that a sum larger than the amount stipulated in Clause 27.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 90 (ninety) days, the amount recommended by the Handback Consultant shall be retained in the Escrow Account for the period specified by it.

ARTICLE 28: ASSIGNMENT AND CHARGES

28.1 Restrictions on assignment and charges

- 28.1.1 Subject to Clauses 28.2 and 28.3, this Agreement shall not be assigned by the Operator to any person save and except with the prior consent in writing of the SPV, which consent the SPV shall be entitled to decline without assigning any reason.
- 28.1.2 Subject to the provisions of Clause 28.2, the Operator shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Operator is a party except with prior consent in writing of the SPV, which consent the SPV shall be entitled to decline without assigning any reason.

28.2 Permitted assignment and charges

The restraints set forth in Clause 28.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets, and their related documents of title arising or created in the ordinary course of business of the Project and as security only for indebtedness to the lenders for financing the operation and maintenance of Project Facilities and/or for working capital arrangements for the Project; and
- (c) liens or encumbrances required by any Applicable Law.

28.3 Assignment by the SPV

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

ARTICLE 29: CHANGE IN LAW

29.1 Increase in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Operator may by notice require the SPV to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the SPV shall pay the amount specified therein; provided that if the SPV shall dispute such claim of the Operator, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 29.1 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

29.2 Reduction in costs

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

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the SPV may by notice require the Operator to pay an amount that would place the Operator in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Operator shall pay the amount specified therein to the SPV; provided that if the Operator shall dispute such claim of the SPV, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 29.2 shall be restricted to changes in law directly affecting the Operator's costs of performing its obligations under this Agreement.

29.3 Protection of NPV

Pursuant to the provisions of Clauses 29.1 and 29.2 and for the purposes of placing the Operator in the same financial position as it would have enjoyed had there been no Change in Law affecting the costs, returns or other financial burden or gains, the Parties shall rely on the Financial / Business Plan to establish a net present value (the "NPV") of the net cash flow and make necessary adjustments in costs, revenues, compensation or other relevant parameters, as the case may be, to procure that the NPV of the net cash flow is the same as it would have been if no Change in Law had occurred.

29.4 Restriction on compensation

The Parties acknowledge and agree that the demand for compensation under this Article 29 shall be restricted to the effect of Change in Law during the respective Contract Year and shall be made at any time after commencement of such year, but no later than 1 (one) year from the close of such Contract Year. Any demand for compensation payable for and in respect of any subsequent Contract Year shall be made after the commencement of the Contract Year to which the demand pertains, but no later than 2 (two) years from the close of such Contract Year.

29.5 No claim in the event of recovery from Users.

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

ARTICLE 30: LIABILITY AND INDEMNITY

30.1 General indemnity

- 30.1.1 The Operator will indemnify, defend, save and hold harmless the SPV and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, ("**the SPV Indemnified Persons**") against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of any breach by the Operator of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Operator to any User, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, breach of this Agreement on the part of the SPV Indemnified Persons.
- 30.1.2 The SPV will indemnify, defend, save and hold harmless the Operator against any and all suits, proceedings, actions, demands and third party claims for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the SPV in the land comprised in the Site, and/or (ii) breach by the SPV of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Operator of its obligations under this Agreement save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under and/or any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Operator, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Operator.

30.2 Indemnity by the Operator

- 30.2.1 Without limiting the generality of Clause 30.1, the Operator shall fully indemnify, hold harmless and defend the SPV and the SPV Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Operator to comply with Applicable Laws and Applicable Permits;
 - (b) payment of taxes required to be made by the Operator in respect of the income or other taxes of the Operator's contractors, suppliers and representatives; or
 - (c) non-payment of amounts due as a result of materials or services furnished to the Operator or any of its contractors which are payable by the Operator or any of its contractors.
- 30.2.2 Without limiting the generality of the provisions of this Article 30, the Operator shall fully indemnify, hold harmless and defend the SPV Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the SPV Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Operator or by the Operator's Contractors in performing the Operator's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Operator shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Operator shall promptly make every reasonable effort to secure for the SPV a license, at no cost to the SPV, authorising continued use of the infringing work. If the Operator is unable to secure such license within a reasonable time, the Operator shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof

with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

30.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 30 (the "**Indemnified Party**") it shall notify the other Party (the "**Indemnifying Party**") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

30.4 Defence of claims

- 30.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 30, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 30.4.2 If the Indemnifying Party has exercised its rights under Clause 30.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 30.4.3 If the Indemnifying Party exercises its rights under Clause 30.3, the Indemnified Party shall nevertheless have the right to employ its own counsel and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:
- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
 - (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
 - (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
 - (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

- (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
- (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement.

Provided that if Sub-clauses (b), (c) or (d) of this Clause 30.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

30.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 30, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect or consequential nature except as expressly provided in this Agreement.

30.6 Survival on Termination

The provisions of this Article 30 shall survive Termination.

ARTICLE 31: RIGHTS OVER THE SITE

31.1 Licensee rights

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

31.2 Access rights of the SPV and others

31.2.1 The Operator shall allow free access to the Site at all times for the authorised representatives and vehicles of the SPV and the Handback Consultant, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Operator shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions.

31.2.2 The Operator shall, for the purpose of operation and maintenance of any utility or road specified in Article 11, allow free access to the Site at all times for the authorised persons and vehicles of the controlling body of such utility or road.

31.3 Property taxes

The Operator shall be liable to pay any property taxes for the Site.

31.4 Restriction on sub-letting

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

ARTICLE 32: DISPUTE RESOLUTION

32.1 Dispute resolution

- 32.1.1 Any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties, and so notified in writing by either Party to the other Party (the "**Dispute**") shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 32.2.
- 32.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

32.2 Conciliation

In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to the Chairman of the SPV and the Chairman of the Board of Directors of the Operator for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 32.1.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 32.3.

32.3 Arbitration

- 32.3.1 Any Dispute which is not resolved amicably by conciliation as provided in Clause 32.2 shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 32.3.2. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**"), or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration Act. The seat of such arbitration shall be at Delhi, and the language of arbitration proceedings shall be English.
- 32.3.2 There shall be a Board of 3 (three) arbitrators of whom each Party shall select one, and the third arbitrator shall be appointed by the 2 (two) arbitrators so selected, and in the event of disagreement between the 2 (two) arbitrators, the appointment shall be made in accordance with the Rules.
- 32.3.3 The arbitrators shall make a reasoned award (the "**Award**"). Any Award made in any arbitration held pursuant to this Article 32 shall be final and binding on the Parties as from the date it is made, and the Operator and the SPV agree and undertake to carry out such Award without delay.
- 32.3.4 The Operator and the SPV agree that an Award may be enforced against the Operator and/or the SPV, as the case may be, and their respective assets wherever situated.
- 32.3.5 This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.

32.4 Adjudication by Regulatory Commission or SPV

In the event of constitution of a statutory Regulatory Commission or SPV with powers to adjudicate upon disputes between the Operator and the SPV, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 32.3, be adjudicated upon by such Regulatory Commission or SPV in accordance with the Applicable Law and all references

to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 33: DISCLOSURE

33.1 Disclosure of Specified Documents

The Operator shall make available for inspection by any person, copies of this Agreement, the Maintenance Manual, free of charge, during normal business hours on all working days at the Operator's Registered Office. The Operator shall prominently display public notices stating the availability of the Specified Documents for such inspection, and shall make copies of the same available to any person upon payment of copying charges on a 'no profit no loss' basis.

33.2 Disclosure of Documents relating to safety

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

ARTICLE 34: REDRESSAL OF PUBLIC GRIEVANCES

34.1 Complaints Register

- 34.1.1 The Operator shall maintain a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**").
- 34.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Operator. Immediately after a complaint is registered, the Operator shall give a receipt to the Complainant stating the date and complaint number.
- 34.1.3 Without prejudice to the provisions of Clauses 34.1.1 and 34.1.2, the SPV may, in consultation with the Operator, specify the procedure for making complaints in electronic form and for responses thereto.

34.2 Redressal of complaints

- 34.2.1 The Operator shall inspect the Complaint Register every day and take prompt and reasonable action for redressal of each complaint. The action taken shall be briefly noted in the Complaint Register and a reply stating the particulars thereof shall be sent by the Operator to the Complainant under a certificate of posting.
- 34.2.2 Within 7 (seven) days of the close of each month, the Operator shall send to the SPV a true photocopy each of all the pages of the Complaint Register on which any entry has been recorded during the course of such month and upon perusal thereof, the SPV may, in its discretion, advise the Operator to take such further action as the SPV may deem appropriate for a fair and just redressal of any grievance. The Operator shall consider such advice and inform the SPV of its decision thereon, and if the SPV is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competent forum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 35: MISCELLANEOUS

35.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed by the laws of India, and the courts at Delhi shall have jurisdiction subject to arbitration as provided for in Article 32.3 over matters arising out of or relating to this Agreement.

35.2 Waiver of immunity

Each Party unconditionally and irrevocably:

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

35.3 Depreciation

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

35.4 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein and if no such period is specified, within 15 (fifteen) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shall pay interest for the period of delay calculated at a rate equal to 15% (fifteen per cent) per annum, and recovery thereof shall be without prejudice to the rights of the Parties under this Agreement including Termination thereof.

35.5 Waiver

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

- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

- (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
- (c) shall not affect the validity or enforceability of this Agreement in any manner.

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

35.6 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

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

35.7 Exclusion of implied warranties etc.

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

35.8 Survival

35.8.1 Termination shall:

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

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

35.9 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn.

35.10 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality

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

35.11 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

35.12 Third Parties

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

35.13 Successors and Assigns

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

35.14 Notices

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

- (a) in the case of the Operator, be given by facsimile and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Operator may from time to time designate by notice to the SPV; provided that notices or other communications to be given to an address outside Delhi may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Operator may from time to time designate by notice to the SPV;
- (b) in the case of the SPV, be given by facsimile and by letter delivered by hand and be addressed to the Chairman of the SPV with a copy delivered to the SPV Representative or such other person as the SPV may from time to time designate by notice to the Operator; provided that if the Operator does not have an office in Delhi it may send such notice by facsimile and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party given in accordance herewith shall be deemed to have been delivered when in the normal course of post it ought to have been delivered.

35.15 Language

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

35.16 Counterparts

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

ARTICLE 36: DEFINITIONS

36.1 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;

"Additional Facilities" means any such facilities which the Operator may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users and which are in addition to the Project Facilities, and not situated on the Site;

"Affected Party" shall have the meaning set forth in Clause 22.1;

"Agreement" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"Annual Consultancy Fees" shall have the meaning ascribed to it in Clause 17.3;

"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, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the operation and maintenance of the Project during the subsistence of this Agreement;

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

"Associate" or **"Affiliate"** means in relation to either Party, a person who controls, is controlled by, or is under the common control with such Party (as used in this definition, the expression "control" means with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or by contract or otherwise);

"Bank" means a bank incorporated in India and having a minimum net worth of Rs. 1000 crore (Rupees one thousand crore);

"Bid" means the documents in their entirety comprised in the bid submitted by the Operator in response to the RfP in accordance with the provisions thereof;

"Bid Security" means the security provided by the Operator to the SPV along with the Bid in a sum of [Rs. 1,80,00,000 (Rupees One Crore Eighty Lakhs)] in accordance with the RfP and which is to remain in force until substituted by the Performance Security;

"Bidding Consortium" or **"Consortium"** refers to a group of companies that has collectively submit the response to be RfP;

"Contract Year" means, (i) for the first year following the COD, the period commencing on the COD and expiring on the date falling immediately before the first anniversary of the COD, and (ii) for each subsequent year, the period commencing from the relevant anniversary of the COD and expiring on the date falling immediately before the subsequent anniversary of the COD;

"COD" or **"Commercial Operation Date"** shall have the meaning set forth in Clause 12.1, and shall be deemed to be the date of commencement of the Operations Period;

"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;

"Change in Ownership" means a transfer of the direct and/or indirect legal or beneficial ownership of any shares, or securities convertible into shares, that causes (a) the aggregate holding of the existing promoters together with their Associates in the total equity to decline below 100% (one hundred per cent) thereof during the Design Phase, and (ii) aggregate shareholding of the Lead Member (in case of a Bidding Consortium) or the Selected Bidder (in case the selected bidder is a sole applicant) to decline below [51] % (fifty one per cent) thereof , or such lower proportion as may be permitted by the SPV during the remaining Term; provided that any material variation (as compared to the representations made by the Operator during the bidding process) in the proportion of the equity holding of promoter to the total equity, , shall constitute Change in Ownership; provided that any transfer of the direct and/or indirect, legal or beneficial ownership leading to acquisition of more than 15% (fifteen per cent) of the total equity by any person and/ or his Associate at any time during the Term shall constitute a Change in Ownership. For the avoidance of doubt, indirect, legal or beneficial ownership of any shares, or securities convertible into shares shall include transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in any person acquiring control over the equity or voting rights of the shares of the Operator;

"Company" means the Company acting as the Operator under this Agreement;

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

"Contractor" means the person or persons, as the case may be, with whom the Operator has entered into any contract for providing any maintenance, consultancy, supervisory, technical or other services of a like nature in relation to the operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Operator;

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

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

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

"Design Phase" shall meaning set forth in Recital [H];

"Dispute" shall have the meaning set forth in Clause 32.1.1;

"Dispute Resolution Procedure" means the procedure for resolution of Disputes set forth in Article 32;

"Divestment Requirements" means the obligations of the Operator for and in respect of Termination as set forth in Clause 26.1;

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

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

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

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

"Encumbrances" means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

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

"Escrow Agreement" shall have the meaning set forth in Clause 19.1.2;

"Escrow Bank" shall have the meaning set forth in Clause 19.1.1;

"Escrow Default" shall have the meaning set forth in Schedule-I;

"Force Majeure" or **"Force Majeure Event"** shall have the meaning ascribed to it in Clause 22.1;

"GOI" means the Government of India;

"Good Industry Practice" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Operator in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"Government" means the Government of India;

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

"Gross Revenues" shall mean the aggregate of all revenue, commissions, interest, fees, charges and allowances received or derived in relation to this Agreement and shall include but not be limited to:

- (a) amounts received or receivable for hiring and usage of the Project Facilities, including non-refundable deposits;
- (b) amounts received or receivable for decoration/ temporary facility arrangements;
- (c) amounts received or receivable for the entertainment events or performances;
- (d) amounts received or receivable for utility charges (including but not limited to electricity and water charges);
- (e) amounts received or receivable for cleaning charges;
- (f) amounts received or receivable for food and beverages and catering related to the Project Facilities;
- (g) amounts received or receivable for advertising rights at the Project Facilities;
- (h) revenues from pouring rights;
- (i) vending income;
- (j) telecommunications revenues, including internet services;
- (k) brand money revenue;
- (l) amounts received for internet services provided to visitors;
- (m) upfront payments received (in any previous financial year also) or receivable in relation to sponsorships, supplier or commercial rights or other rights, amortised over the period to which that right or payment relates; and
- (n) any other revenue source attributable to the operations and management of Project Facilities;

"Indemnified Party" means the Party entitled to the benefit of an indemnity pursuant to Article 30;

"Indemnifying Party" means the Party obligated to indemnify the other Party pursuant to Article 30;

"Indirect Political Event" shall have the meaning set forth in Clause 22.3;

"Insurance Cover" means the aggregate of the maximum sums insured under the insurances taken out by the Operator pursuant to Article 20, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable in relation to such act or event;

"LOA" or **"Letter of Acceptance"** means the letter of acceptance referred to in Recital (D);

"Lead Member" means the member of the Bidding Consortium holding at least 51% shareholding in the Bidding Consortium, which cannot be changed for a period of 5 (five) years after the COD;

"MAG" shall have the meaning ascribed to it in Clause 17.1.1;

"Maintenance Manual" shall have the meaning ascribed to it in Clause 13.2;

"Maintenance Programme" shall have the meaning ascribed to it in Clause 13.3.1;

"Major Maintenance Works" means the [works to be undertaken as part of the Project Facilities and includes] maintenance works required to be undertaken at intervals of 3 (three) years or more in accordance with Good Industry Practice to procure that the Project conforms to Maintenance Manual and Safety Requirements;

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

"Mega Government Event" means any conferences, summits, exhibitions, expo, diplomatic events or any other events of an analogous nature, organized or hosted by the Government of India/ Central Government or any ministry or authority under the direct administrative control or aegis of the Central Government, in which the Government of India has direct strategic and financial interest or importance and includes any event in which dignitaries or other individuals of strategic importance are scheduled or anticipated to be in attendance;

"Mega Government Event Request Notice" has the meaning ascribed to it in Clause 18.3.3;

"Non-Political Event" shall have the meaning set forth in Clause 22.2;

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

"Operator Default" shall have the meaning set forth in Clause 25.1.1;

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

"Occupancy" shall have the meaning ascribed to it as per the formula below:

$$\left[\frac{T_s}{T_o \times 300} \right] \times 100$$

Where:

Ts = Total square meters sold in a given year (of closed exhibition and convention space space)

T_o = Total closed leasable area (in sq. m) of the Project site;

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

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

"Performance Security" shall have the meaning set forth in Clause 9.2;

"Political Event" shall have the meaning set forth in Clause 22.4;

"PEAC" means the preliminary engineer and architecture consultant appointed in relation to the Project;

"Project" means the operation and management of the India International Convention & Expo Centre and other facilities associated with it in accordance with the provisions of this Agreement and includes all works, services and equipment relating to or in respect of the Scope of the Project;

"Project Agreements" means this Agreement, and any other agreements or contracts that may be entered into by the Operator with any person in connection with matters relating to, arising out of or incidental to the Project, including agreements entered into between the Operator with any Person for the purposes of organizing any event or convention, but does not include the Escrow Agreement;

"Project Assets" means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of license, Right of Way or otherwise; (b) tangible assets such as civil works and equipment sign boards, electrical systems, communication systems, rest areas, relief centres, maintenance stores and administrative offices; (c) Project Facilities situated on the Site; (d) all rights of the Operator under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project, but does not include Additional Facilities;

"Project Facilities Completion Schedule" means the progressive project milestones set forth by the EPC Contractor for completion of each of the Project Facilities and includes their date of completion;

"Project Facilities" means the exhibition and convention centre and all the amenities and facilities situated on the Site, as described in Schedule-B and includes Major Maintenance Works specified therein;

"Phase I Facilities" means all the amenities and facilities situated on the Site, other than the Future Development

"Future Development" shall have the meaning ascribed to it in Clause 2.2;

"Revenue" means the charge levied on and payable by a User availing the Project Facilities or a part thereof, in accordance with this Agreement

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

“Requested Dates” has the meaning ascribed to it in Clause 18.3.3;

"RfP" shall have the meaning set forth in Recital 'C';

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

"Safety Consultant" shall have the meaning set forth in Clause 15.1.2;

"Safety Requirements" shall have the meaning set forth in Clause 15.1.1;

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

"Site" or **“Project Site”** shall have the meaning set forth in Clause 10.1;

“SPV Conditions Precedent” shall have the meaning set forth in Clause 4.1.2;

“SPV Conditions Subsequent” shall have the meaning set forth in Clause 4.1.3;

"SPV Default" shall have the meaning set forth in Clause 25.2.1;

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

"Specifications and Standards" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project as set forth in Schedule-C and any modifications thereof, or additions thereto as included in the design, operations and management for the Project submitted by the Operator to, and expressly approved by, the SPV;

"Statutory Auditors" means a reputable firm of chartered accountants acting as the statutory auditors of the Operator under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 21.1.1;

"Suspension" shall have the meaning set forth in Clause 24.1;

"Taxes" means any Indian taxes including Goods and Services Tax, excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"Term" means the period starting on and from COD and ending on the Transfer Date;

"Termination" means the expiry or termination of this Agreement;

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

"Termination Payment" means the amount payable by the SPV to the Operator upon Termination as specifically set forth in Clause 23.9 and Clause 26.3.

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

"User(s)" means a person who uses the Project Facilities or any part thereof in/on any vehicle;

"Vesting Certificate" shall have the meaning set forth in Clause 26.3; and

"WPI" means the Wholesale Price Index for all commodities as published by the Ministry of Commerce & Industry, Government of India and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI of the last completed Financial Year.

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

SIGNED, SEALED AND DELIVERED

For and on behalf of [INSERT NAME OF THE
AUTHORITY] by:

For and on behalf of OPERATOR by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

In the presence of:

1.

2.

SCHEDULE-A

(See Clause 10.1)

SITE OF THE PROJECT

1. The Site

- 1.1 Site of the Project shall include the land, buildings, structures and road works as described in Annex-I of this Schedule-A.
- 1.2 An inventory of the Site including the land, buildings, structures, trees and any other immovable property on, or attached to, the Site shall be prepared jointly by the SPV Representative and the Operator, and such inventory shall form part of the memorandum referred to in Clause 10.3.1 of the Agreement.

Annex -1
(Schedule-A)

THE SITE

Site location:

The site for the Project is located at Sector 25, Dwarka, New Delhi, approximately 3 Kms from IGI Airport and well connected to metro and road links. The site is located in a 89.72 Ha integrated mixed-use district being developed by the SPV in a well-developed area in western end of Delhi adjoining the Millennium City of Gurgaon.

Development Plan:

The Project includes approximately 360,000 sq. m. of covered exhibition cum convention space (with approximately 250,000 sq. m. of indoor exhibition space, 50,000 sq. m. of foyer space and 60,000 sq. m. of convention space), as well as 50,000 sq. m. of outdoor exhibition area.

Phasing Plan:

It is envisaged to develop the Project in a phased manner. Phase 1 shall have approximately 70,000 sq. m. of covered exhibition area, along with approximately 60,000 sq. m. of covered convention area. Future Development, to be undertaken by the SPV in a phased manner, shall add approximately 180,000 sq. m. of covered exhibition area.

Site accessibility:

Site will be accessible from UER-II (Urban Extension Road-II) and the upcoming Dwarka-Manesar Expressway, as well as metro connectivity with a dedicated metro station for the site.

SCHEDULE -B

(See Clause 2.1)

PROJECT FACILITIES

1.1 Project Facilities

The SPV shall construct/ install the Project Facilities described in Annex-I of this schedule to form part of the Project.

1.2 Infrastructure Services:

1.2.1 SPV or its representative shall provide following services (“**Infrastructure Services**”) to the Operator.

- i. **Parking Services:** SPV or its representative shall be provide parking facility for the overall ECC development. It shall provide for manning, security & surveillance, and any other service/ facility required for effective operations of the parking facilities. Parking facility can be used by the Operator on applicable tariff as decided by the SPV during the time.
- ii. **District Heating and Cooling Plant (DHCP):** SPV or its representative shall provide for air-conditioning services for the Project. It shall build, manage, operate, and maintain a District Heating and Cooling Plant which shall supply chilled / hot water within the Project Facility. It shall also provide metering facilities at appropriate points within the Project Facility.

Charges for the usage of District Heating and Cooling services shall be agreed by the Parties in service level agreements, as per Clause 4.1.3 of this Agreement. For clarity, SPV shall provide such service at rates so as to cover operation and administration expenses incurred by it in providing the said service.

- iii. **Facility maintenance services:** SPV or its representative shall provide for
 - a. watch & ward and general maintenance of the area around the Project,
 - b. maintenance of trunk infrastructure, and
 - c. solid waste management services.

Charges for the facility maintenance services shall be agreed by the Parties in service level agreements, as per Clause 4.1.3 of this Agreement. For clarity, SPV shall provide such services at rates so as to cover operating and administration expenses incurred by it in providing the said services.

- iv. Electricity (direct and back-up): SPV or its representative shall distribute electricity, received by it from an appropriate DISCOM, to the Project. It shall also provide round-the-clock back-up electricity for the Project. It shall build, manage, operate, and maintain appropriate electricity distribution infrastructure, diesel storage facility, DG sets, transformers, and any other infrastructure required to provide power back-up to the Project. It shall also provide metering facilities at appropriate points within the Project Facility.

Electricity charges shall be agreed by the Parties in service level agreements, as per Clause 4.1.3 of this Agreement. For clarity, SPV shall provide such electricity at rates so as to cover procurement, operation and administration expenses incurred by it in providing the said service.

- v. Water supply: SPV or its representative shall distribute fresh water, as received from an appropriate Government agency, within the Project site. It shall also supply recycled water within the Project Site. For clarity, it shall build, manage, operate, and maintain appropriate water distribution network, drainage system, water treatment plant and other facilities required to distribute fresh water and supply recycled water to the Project. It shall provide metering facilities at appropriate points within the Project Facility.

Fresh and recycled water charges shall be agreed by the Parties in service level agreements, as per Clause 4.1.3 of this Agreement. For clarity, SPV shall provide fresh and recycled water at rates so as to cover procurement, operation and administration expenses incurred by it in providing the said service.

1.3 Infrastructure Facilities: SPV shall provide, operate and maintain following trunk infrastructure to ensure smooth functioning of the Project:

- i. Electricity distribution network
- ii. Water distribution network
- iii. Gas distribution network
- iv. Telecommunication and internet network
- v. Waste Water Treatment Plant
- vi. Solid Water Management System
- vii. Storm water drainage system

1.3 Major Maintenance Works

Subsequent to the COD, the Operator shall be required to undertake the following maintenance activities, in relation to the Project Facilities, in accordance with the provisions of the Article 13. The responsibilities for Operator and SPV have been defined below:

	Category - A Routine maintenance	Category - B Corrective maintenance	Category - C Replacement/ Renewal activities
Real Property	Operator	SPV	SPV
Fixture	Operator	SPV	SPV
Furniture	Operator	Operator	SPV (limited to furniture provided by SPV as part of Project Facility)

For the purposes of this Schedule:

“Real Property” means and includes the buildings themselves (building structure, waterproofing, structural work, metal beams, coverings, façades, slab, roadways and platform traversing) including utilities distribution and removal (gas and water, etc.) as well as electricity supply which includes all high and low-voltage networks (including electrical and telephone wiring, computer wiring, tubing for the supply and support of computer wiring or other utilities), as well as : heating, air conditioning, elevators, escalators, security and surveillance equipment, lighting (general and emergency), computer and telephone networks, antennas (transmitters/receivers)

“Fixtures” means all elements permanently affixed to Real Property and which contribute directly to meeting the building’s purpose and operation like kitchen equipment, staging structures (technical panels, patches, cross connects, audiovisual equipment, light, sound and image mixing racks, light adjusters and sound equalisers) and support structures for lighting and sound elements as well as motorised lifting systems associated with these structures, motorised fixed/mobile stage platforms, etc.)

“Furniture” means and includes mobile elements which meet the minimum conditions necessary to operate the Project such as furniture and accessories (tables, chairs, sofas, lamps, paper boards, maintenance carriages, lift trucks).

“Routine maintenance” means all activities that are necessary for operation of the Project and are conducted on elements which are easily and safely accessed using support equipment built into the Project Facilities and/or support equipment (integrated or external) which is easy to use or implement.

“Corrective maintenance” means maintenance of key parts/components of the Project Facilities whose replacement is imperative and would determine the structural integrity of the Project Facilities. Such activities would include maintenance and repair activities to be conducted after a breakdown or after a deterioration/wear and tear is detected in order to restore the Project Facilities to a condition in which it can accomplish its required function.

“Replacement and Renewal activities” means all activities and operations necessary in order to replace any existing component of the Project Facilities having a specific intended use, with an identical or better item, given the evolution of the said asset and techniques. Such activities and operations are necessary, where activities under Clause 13.1.1 (b) (Corrective Maintenance) cannot guarantee the use of said component of the Project Facilities, or when a Change in law requires such renewal or replacement.

Annex -1
(Schedule-B)

Each of the Project Facility is described below:

Real Property: It shall include the following items

1. Civil structures and service infrastructure: Area statement and floor plan of the civil structures available at the Site, which are a part of Project Facilities. Details will be provided as an addendum to this Agreement before COD
2. Equipment installed at the Site: A list of equipment installed at the Site, along with details like capacity and other relevant parameters is provided in Annex-2. Addition/ modification/ deletions to this list shall be provided as an addendum to this Agreement before COD

Fixtures: It shall include all elements permanently affixed to Real Property and which contribute directly to meeting the building's purpose and operations. Details will be provided as an addendum to this Agreement before COD.

Furniture: It shall include mobile elements which meet the minimum conditions necessary to operate the Project. Details will be provided as an addendum to this Agreement before COD.

SCHEDULE -C

(See Clause 2.1)

SPECIFICATIONS AND STANDARDS

1.4 Specifications and Standards

- 1.4.1 The Operator shall operate and maintain the Project Facilities in accordance with specifications and standards mentioned in Annex – 1. Details will be provided as an addendum to this Agreement before COD. Any changes to Annex – 1 after COD shall be signed by both parties and included in this Agreement as an addendum.

Annex -1

(Schedule-C)

SPECIFICATIONS AND STANDARDS FOR THE PROJECT

[To be added on or before COD]

SCHEDULE - D

(See Clause 4.1.3)

APPLICABLE PERMITS

1 Applicable Permits

1.1 The SPV will acquire/has already acquired the following Permits as required:-

LIST OF APPROVALS

1. Height Clearance- approved from Airport Authority of India (AAI).
2. Layout Plan- approved by South Delhi Municipal Corporation (SDMC).
3. Two numbers of Road connectivity from West Side of Project Site- approved by Delhi Development Authority (DDA) .
4. TOR -approval for Environmental Impact Assessment (EIA) obtained from Environment Audit Committee (EAC).
5. Concept Layout plan approval obtained from Delhi Urban Arts Commission (DUAC)
6. Power Sourcing approval obtained from BSES Rajdhani Power Ltd (BRPL)
7. Environmental Clearance obtained from MoEFCC/EAC
8. Water Requirement approval obtained by Delhi Jal Board (DJB).
9. 3rd Road connectivity approval by DDA/ Unified Traffic And Transportation Infrastructure Planning and Engineering Centre (UTTIPEC).
10. External Circulation Plan approval from UTTIPEC
11. Tree Cutting / Afforestation approval by Department of Forest, Delhi.
12. Building Plan Approval by SDMC/ DUAC
13. Revised Layout Plan approval from SDMC & DUAC
14. Revised Height Clearance/ Approval by Airport Authority of India (AAI)
15. Consent to Establish approval from DPCC .
16. Approval of Storm water Layout Plan by SDMC
17. Approval of Water Supply layout plan by DJB
18. Approval of Sewer Layout Plan by DJB

1.2 The following Applicable Permits will be acquired by the EPC Contractor

1. NOC from Delhi Traffic Police
2. Building Plan Approval by DDA/ SDMC for Phase -1 Development
3. Permission from Department of Mines for Excavation
4. Permission from Central Ground Authority (CGWA) for Piling/ Boring
5. Intimation to DDA/ SDMC before 7 day of start of Construction

6. Environmental monitoring and compliance every 06 months
7. Intimation to Health and Safety Department before start of Construction
8. Permission from Central Ground Water Board for Rain Water Harvesting Network Layout

9. Approval from Chief Controller of Explosive Nagpur (for Storage of Diesel / Petrol)
10. Obtaining IGBC Green Building Platinum V3 certification from Indian Green Building Council for Phase-1 Development.
11. NOC from Lift Inspector, Government of National Capital Territory of Delhi
12. NOC for Fire Inspection
13. NOC from BRPL (Power supply).
14. NOC from DJB for Water and Sewerage connection
15. Consent to Operate (COP) Certificate from DPCC

1.3 All other Applicable Permits under law will be acquired by the Operator.

SCHEDULE - E

(See Clause 9.1)

PART A: SECURITY DURING DESIGN PHASE

To,

The [insert designation],

[Insert name of the SPV]

[Insert address]

WHEREAS:

- (A) [●] (the "**Operator**") and [International Exhibition and Convention Centre Limited] (the "**SPV**") have entered into an Operation Services Agreement dated [●] (the "**Agreement**") whereby the SPV has agreed to the Operator undertaking the operation and management of the Project Facilities (as defined under the Agreement), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Security During Design Phase to the SPV in a sum of [Rs [●] (Rupees [●])] (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Design Phase (as defined in the Agreement).
- (C) We, [insert name of the Bank] through our Branch at [insert address] (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Security During Design Phase.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator's obligations during the Design Phase, under and in accordance with the Agreement, and agrees and undertakes to pay to the SPV, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the SPV, under the hand of an officer not below the rank of a [General Manager or a designation of an equivalent seniority in the SPV]⁵, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Design Phase under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the SPV and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.
3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by

⁵ Note: To be confirmed

their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.

4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The SPV shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SPV against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the SPV, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect when the Operator shall have submitted the Performance Security (as defined under the Agreement), and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Security During Design Phase along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the SPV shall release the Security During Design Phase forthwith⁶.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and will be renewed on a yearly basis 30 (thirty) days prior to its expiry

⁶ Note: To be confirmed

until the Performance Security under the Agreement is submitted by the Operator or it is released earlier by the SPV pursuant to the provisions of the Agreement, whichever is earlier.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE - E

PART B: PERFORMANCE SECURITY

(See Clause 9.2)

To,

The [*insert designation*],

[International Exhibition and Convention Centre Limited]

[*Insert address*]

WHEREAS:

- (A) [●] (the "**Operator**") and [International Exhibition and Convention Centre Limited] (the "**SPV**") have entered into an Operation Services Agreement dated [●] (the "**Agreement**") whereby the SPV has agreed to the Operator undertaking the operation and management of the Project Facilities (as defined under the Agreement), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Performance Security to the SPV in a sum of [Rs [●] (Rupees [●])] ⁷ (the "**Guarantee Amount**") as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term (as defined in the Agreement).
- (C) We, [*insert name of the Bank*] through our Branch at [*insert address*] (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator's obligations during the Term, under and in accordance with the Agreement, and agrees and undertakes to pay to the SPV, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the SPV, under the hand of an officer not below the rank of a [General Manager or a designation of an equivalent seniority in the SPV] ⁸, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the SPV and the

⁷ Note: Initially, and until the third anniversary of the COD, the Guarantee Amount will be for an amount equivalent to the MAG quoted by the Selected Applicant under the RfP, and (b) commencing from the third anniversary of the COD for an amount equivalent to the Annual Licence Fee for the previous Contract Year.

⁸ Internal Note: To be confirmed.

Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The SPV shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SPV against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the SPV, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Performance Security shall cease to be in force and effect upon expiry of the Term (as defined under the Agreement), and provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the SPV shall release the Performance Security forthwith, provided that the Handback Performance Security has been submitted by the Operator in accordance with Clause 16.7 of the Agreement and the SPV has issued the Vesting Certificate to the Operator.

9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.
11. This Guarantee shall come into force with immediate effect and shall remain in force and effect for a period of one year and will be renewed on a yearly basis 30 (thirty) days prior to its expiry until the Term of the Agreement or until the SPV has issued the Vesting Certificate to the Operator pursuant to the provisions of the Agreement, whichever is later.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE –F

(See Clause 14.5)

MONTHLY REVENUE STATEMENT

Project:

Quarter:

This should include the following details

- Breakup of all revenues of the Operator for the month by source and by segment (catering, rental, advertising, ICT and so on)
- Details of all hall bookings and events with total sq.m booked and total delegates and visitors that attended

Remarks, if any:

SCHEDULE -G

(See Clause 15.1.1)

SAFETY REQUIREMENTS

[To be added on or before COD]

SCHEDULE - H

(See Clause 16.7)

HANDBACK PERFORMANCE SECURITY

To,

The [insert designation],

[International Exhibition and Convention Centre Limited]

[Insert address]

WHEREAS:

- (A) [●] (the "**Operator**") and [International Exhibition and Convention Centre Limited] (the "**SPV**") have entered into an Operation Services Agreement dated [●] (the "**Agreement**") whereby the SPV has agreed to the Operator undertaking the operation and management of the Project Facilities (as defined under the Agreement), subject to and in accordance with the provisions of the Agreement.
- (B) The Agreement requires the Operator to furnish a Handback Performance Security to the SPV in a sum of [Rs [●] (Rupees [●])](the "**Guarantee Amount**")⁹ as security for due and faithful performance of its obligations, under and in accordance with the Agreement, during the Term (as defined in the Agreement).
- (C) We, [insert name of the Bank] through our Branch at [insert address] (the "**Bank**") have agreed to furnish this Bank Guarantee by way of Handback Performance Security.

NOW, THEREFORE, the Bank hereby, unconditionally and irrevocably, guarantees and affirms as follows:

1. The Bank hereby unconditionally and irrevocably guarantees the due and faithful performance of the Operator's obligations pertaining to the Handback Requirements outlined under Clause 16.2 of the Agreement, under and in accordance with the Agreement, and agrees and undertakes to pay to the SPV, upon its mere first written demand, and without any demur, reservation, recourse, contest or protest, and without any reference to the Operator, such sum or sums up to an aggregate sum of the Guarantee Amount as the SPV shall claim, without the SPV being required to prove or to show grounds or reasons for its demand and/or for the sum specified therein.
2. A letter from the SPV, under the hand of an officer not below the rank of a [General Manager or a designation of an equivalent seniority in the SPV]¹⁰, that the Operator has committed default in the due and faithful performance of all or any of its obligations under and in accordance with the Agreement shall be conclusive, final and binding on the Bank. The Bank further agrees that the SPV shall be the sole judge as to whether the Operator is in default in due and faithful performance of its obligations during the Term under the Agreement and its decision that the Operator is in default shall be final, and binding on the Bank, notwithstanding any differences between the SPV and the Operator, or any dispute between them pending before any court, tribunal, arbitrators or any other authority or body, or by the discharge of the Operator for any reason whatsoever.

⁹ Note: The guarantee amount of the Handback Performance Security will be for an amount equal to the Annual License Fee that is payable 2 years prior to the end of the Term of the Agreement.

¹⁰ Internal Note: To be confirmed.

3. In order to give effect to this Guarantee, the SPV shall be entitled to act as if the Bank were the principal debtor and any change in the constitution of the Operator and/or the Bank, whether by their absorption with any other body or corporation or otherwise, shall not in any way or manner affect the liability or obligation of the Bank under this Guarantee.
4. It shall not be necessary, and the Bank hereby waives any necessity, for the SPV to proceed against the Operator before presenting to the Bank its demand under this Guarantee.
5. The SPV shall have the liberty, without affecting in any manner the liability of the Bank under this Guarantee, to vary at any time, the terms and conditions of the Agreement or to extend the time or period for the compliance with, fulfilment and/or performance of all or any of the obligations of the Operator contained in the Agreement or to postpone for any time, and from time to time, any of the rights and powers exercisable by the SPV against the Operator, and either to enforce or forbear from enforcing any of the terms and conditions contained in the Agreement and/or the securities available to the SPV, and the Bank shall not be released from its liability and obligation under these presents by any exercise by the SPV of the liberty with reference to the matters aforesaid or by reason of time being given to the Operator or any other forbearance, indulgence, act or omission on the part of the SPV or of any other matter or thing whatsoever which under any law relating to sureties and guarantors would but for this provision have the effect of releasing the Bank from its liability and obligation under this Guarantee and the Bank hereby waives all of its rights under any such law.
6. This Guarantee is in addition to and not in substitution of any other guarantee or security now or which may hereafter be held by the SPV in respect of or relating to the Agreement or for the fulfilment, compliance and/or performance of all or any of the obligations of the Operator under the Agreement.
7. Notwithstanding anything contained hereinbefore, the liability of the Bank under this Guarantee is restricted to the Guarantee Amount and this Guarantee will remain in force for the period specified in paragraph 8 below and unless a demand or claim in writing is made by the SPV on the Bank under this Guarantee, not later than 6 (six) months from the date of expiry of this Guarantee, all rights of the SPV under this Guarantee shall be forfeited and the Bank shall be relieved from its liabilities hereunder.
8. The Handback Performance Security shall continue to be in force and effect till the transfer of the Project Facility to the SPV and completion of all repair works required to be carried out as per Clause 16.2.3 (as outlined under the Agreement), whichever is later, provided the Operator is not in breach of this Agreement. Upon request made by the Operator for release of the Handback Performance Security along with the particulars required hereunder, duly certified by a statutory auditor of the Operator, the SPV shall release the Handback Performance Security forthwith, provided that the repair works required to be carried out as per Clause 16.2.3 (as outlined under the Agreement) have been completed and provided the Operator is not in breach of this Agreement.
9. The Bank undertakes not to revoke this Guarantee during its currency, except with the previous express consent of the SPV in writing, and declares that it has the power to issue this Guarantee and the undersigned has full powers to do so on behalf of the Bank.
10. Any notice by way of request, demand or otherwise hereunder may be sent by post addressed to the Bank at its above referred Branch, which shall be deemed to have been duly authorised to receive such notice and to effect payment thereof forthwith, and if sent by post it shall be deemed to have been given at the time when it ought to have been delivered in due course of post and in proving such notice, when given by post, it shall be sufficient to prove that the envelope containing the notice was posted and a certificate signed by an officer of the SPV that the envelope was so posted shall be conclusive.

Signed and sealed this ** day of ***, 20** at ***.

SIGNED, SEALED AND DELIVERED

For and on behalf of the BANK by:

(Signature)

(Name)

(Designation)

(Address)

SCHEDULE –I

(See Clause 19.1.2)

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is entered into on this *** day of *** 200*.

AMONGST

- 1 [**** LIMITED], a company incorporated under the provisions of the Companies Act, 1956 and having its registered office at **** (hereinafter referred to as the "**Operator**" which expression shall unless repugnant to the context or meaning thereof include its successors, assigns and permitted substitutes);
- 2 ****[name and particulars of the Escrow Bank] and having its registered office at ****(hereinafter referred to as the "**Escrow Bank**" which expression shall unless repugnant to the context or meaning thereof include its successors and substitutes); and
- 3 [International Exhibition and Convention Centre Private Limited, represented by its Chairman and having its principal offices at G-5 & 6, Sector 10, Dwarka, New Delhi-110075] (hereinafter referred to as the "**SPV**" which expression shall unless repugnant to the context or meaning thereof include its administrators, successors and assigns).

WHEREAS:

- (A) The SPV has entered into an Operation Services Agreement dated *** with the Operator (the "**Operation Services Agreement**") for operation and management of the [New Delhi Exhibition-cum-Convention Centre] on operate and manage basis and a copy of which is annexed hereto and marked as Annex-A to form part of this Agreement.
- (B) The Operation Services Agreement requires the Operator to establish an Escrow Account, *inter alia*, on the terms and conditions stated therein.

NOW IT IS HEREBY AGREED as follows:

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:

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

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

"Cure Period" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Operator, and shall commence from the date on which a notice is delivered by the SPV to the Operator asking the latter to cure the breach or default specified in such notice;

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

"Escrow Default" shall have the meaning ascribed thereto in Clause 6.1;

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

"Payment Date" means, in relation to any payment specified in Clause 4.1, the date(s) specified for such payment; and

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

1.2 Interpretation

- 1.2.1 The words and expressions beginning with capital letters and defined in this Agreement shall have the meaning ascribed thereto herein, and the words and expressions used in this Agreement and not defined herein but defined in the Operation Services Agreement shall, unless repugnant to the context, have the meaning ascribed thereto in the Operation Services Agreement.
- 1.2.2 References to Clauses are, unless stated otherwise, references to Clauses of this Agreement.
- 1.2.3 The rules of interpretation stated in Clauses 1.2, 1.3 and 1.4 of the Operation Services Agreement shall apply, mutatis mutandis, to this Agreement.

2 ESCROW ACCOUNT

2.1 Escrow Bank to act as trustee

- 2.1.1 The Operator hereby appoints the Escrow Bank to act as trustee for the SPV and the Operator in connection herewith and authorises the Escrow Bank to exercise such rights, powers, authorities and discretion as are specifically delegated to the Escrow Bank by the terms hereof together with all such rights, powers, authorities and discretion as are reasonably incidental hereto, and the Escrow Bank accepts such appointment pursuant to the terms hereof.
- 2.1.2 The Operator hereby declares that all rights, title and interest in and to the Escrow Account shall be vested in the Escrow Bank and held in trust for the SPV and the Operator, and applied in accordance with the terms of this Agreement. No person other than the SPV and the Operator shall have any rights hereunder as the beneficiaries of, or as third party beneficiaries under this Agreement.

2.2 Acceptance of Escrow Bank

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

2.3 Establishment and operation of Escrow Account

- 2.3.1 Within 30 (thirty) days from the date of this Agreement, and in any case prior to the COD, the Operator shall open and establish the Escrow Account with the **** (name of Branch) Branch of the Escrow Bank. The Escrow Account shall be denominated in Rupees.
- 2.3.2 The Escrow Bank shall maintain the Escrow Account in accordance with the terms of this Agreement and its usual practices and applicable regulations, and pay the maximum rate of interest payable to similar customers on the balance in the said account from time to time.

- 2.3.3 The Escrow Bank and the Operator shall agree on the detailed mandates, terms and conditions, and operating procedures for the Escrow Account, but in the event of any conflict or inconsistency between this Agreement and such mandates, terms and conditions or procedures, this Agreement shall prevail.

2.4 Escrow Bank's fee

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

2.5 Rights of the parties

The rights of the SPV and the Operator in the monies held in the Escrow Account are set forth in their entirety in this Agreement and the SPV and the Operator shall have no other rights against or to the monies in the Escrow Account.

3 DEPOSITS INTO ESCROW ACCOUNT

3.1 Deposits by the Operator

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

- (a) all monies received from any source in relation to the Project including from Banks, insurance and shareholders;
- (b) all Revenues from or in respect of the Project, including the proceeds of insurance claims; and
- (c) any other receipts or revenues from or in respect of the Project

- 3.1.2 The Operator may at any time make deposits of its other funds into the Escrow Account, provided that the provisions of this Agreement shall apply to such deposits.

3.2 Deposits by the SPV

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

- (a) all Revenue collected by the SPV in exercise of its rights under the Operation Services Agreement; and
- (b) Termination Payments:

Provided that the SPV shall be entitled to appropriate from the aforesaid amounts, due and payable to it by the Operator, and the balance remaining shall be deposited into the Escrow Account.

3.3 Interest on deposits

The Escrow Bank agrees and undertakes that all interest accruing on the balances of the Escrow Account shall be credited to the Escrow Account; provided that the Escrow Bank shall be entitled to appropriate therefrom the fee and expenses due to it from the Operator in relation to the Escrow Account and credit the balance remaining to the Escrow Account.

4 WITHDRAWALS FROM ESCROW ACCOUNT

4.1 Withdrawals during the Term

- 4.1.1 At the beginning of every month, or at such shorter intervals as the Operator may by written instructions determine, the Escrow Bank shall withdraw amounts from the Escrow Account and appropriate them in the following order by depositing such amounts in the relevant Sub-Accounts for making due payments, and if such payments are not due in any month, then retain such monies in such Sub-Accounts and pay out therefrom on the Payment Date(s):
- (a) all taxes and statutory payments due and payable by the Operator in respect of the Project Facilities;
 - (b) Annual license Fee due and payable to the SPV
 - (c) any other payments required to be made under this Agreement; and
 - (d) O&M Expenses in accordance with Good Industry Practice;
 - (e) monthly proportionate provisions of any debt due
 - (f) balance, if any, in accordance with the instructions of the Operator:
- 4.1.2 Not later than 60 (sixty) days prior to the commencement of each Contract Year, the Operator shall provide to the Escrow Bank, details of the amounts likely to be required for each of the payment obligations set forth in this Clause 4.1; provided that such amounts may be subsequently modified, with prior written approval of the SPV, if fresh information received during the course of the year makes such modification necessary.

4.2 Withdrawals upon Termination

Upon Termination of the Agreement, all amounts standing to the credit of the Escrow Account shall, notwithstanding anything in this Agreement, be appropriated and dealt with in the following order:

- (a) all taxes due and payable by the Operator in respect of the Project Facilities;
- (b) Annual License Fee due and payable to the SPV;
- (c) all payments and damages relating to the liability for defects and deficiencies payable by the Operator to the SPV set forth in Article 27;
- (d) any other payments required to be made under this Agreement; and
- (e) O&M Expenses;
- (f) O&M Expenses and other costs and expenses incurred by the SPV in accordance with the provisions of this Agreement, and certified by the SPV as due and payable to it;
- (g) monthly proportionate provisions of any debt due;
- (h) balance, if any, in accordance with the instructions of the Operator:

Provided that the disbursements specified in Sub-clause (i) of this Clause 4.2 shall be undertaken only after the Vesting Certificate has been issued by the SPV.

4.3 Application of insufficient funds

Funds in the Escrow Account shall be applied in the serial order of priority set forth in Clauses 4.1 and 4.2, as the case may be. If the funds available are not sufficient to meet all the

requirements, the Escrow Bank shall apply such funds in the serial order of priority until exhaustion thereof.

4.4 Application of insurance proceeds

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

4.5 Withdrawals during Suspension

Notwithstanding anything to the contrary contained in this Agreement, the SPV may exercise all or any of the rights of the Operator during the period of Suspension under Article 32 of the Agreement. Any instructions given by the SPV to the Escrow Bank during such period shall be complied with as if such instructions were given by the Operator under this Agreement and all actions of the SPV hereunder shall be deemed to have been taken for and on behalf of the Operator.

5 OBLIGATIONS OF THE ESCROW BANK

5.1 Segregation of funds

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

5.2 Notification of balances

7 (seven) business days prior to each Payment Date (and for this purpose the Escrow Bank shall be entitled to rely on an affirmation by the Operator as to the relevant Payment Dates), the Escrow Bank shall notify the SPV of the balances in the Escrow Account and Sub-Accounts as at the close of business on the immediately preceding business day.

5.3 Communications and notices

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

- (a) may, in the absence of bad faith or gross negligence on its part, rely as to any matters of fact which might reasonably be expected to be within the knowledge of the Operator upon a certificate signed by or on behalf of the Operator;
- (b) may, in the absence of bad faith or gross negligence on its part, rely upon the authenticity of any communication or document believed by it to be authentic;
- (c) shall, within 5 (five) business days after receipt, deliver a copy to the SPV of any notice or document received by the Escrow Bank in its capacity as the Escrow Bank from the Operator or any other person hereunder or in connection herewith; and
- (d) shall, within 5 (five) business days after receipt, deliver a copy to the Operator of any notice or document received by the Escrow Bank from the SPV in connection herewith.

5.4 No set off

The Escrow Bank agrees not to claim or exercise any right of set off, banker's lien or other right or remedy with respect to amounts standing to the credit of the Escrow Account. For the

avoidance of doubt, it is hereby acknowledged and agreed by the Escrow Bank that the monies and properties held by the Escrow Bank in the Escrow Account shall not be considered as part of the assets of the Escrow Bank and being trust property, shall in the case of bankruptcy or liquidation of the Escrow Bank be wholly excluded from the assets of the Escrow Bank in such bankruptcy or liquidation.

5.5 Regulatory approvals

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

6 ESCROW DEFAULT

6.1 Escrow Default

6.1.1 Following events shall constitute an event of default by the Operator (an "**Escrow Default**") unless such event of default has occurred as a result of Force Majeure or any act or omission of the SPV:

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

3.1.2 Upon occurrence of an Escrow Default, the consequences thereof shall be dealt with under and in accordance with the provisions of the Agreement.

7 TERMINATION OF ESCROW AGREEMENT

7.1 Duration of the Escrow Agreement

This Agreement shall remain in full force and effect so long as any of its obligations to the SPV remain to be discharged, unless terminated earlier by consent of all the Parties or otherwise in accordance with the provisions of this Agreement.

7.2 Substitution of Escrow Bank

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

7.3 Closure of Escrow Account

The Escrow Bank shall, at the request of the Operator made on or after the payment by the Operator of all outstanding amounts under the Operation Services Agreement including the payments specified in Clause 4.2, and upon confirmation of receipt of such payments, close the

Escrow Account and Sub-Accounts and pay any amount standing to the credit thereof to the Operator. Upon closure of the Escrow Account hereunder, the Escrow Agreement shall be deemed to be terminated.

8 SUPPLEMENTARY ESCROW AGREEMENT

8.1 Supplementary escrow agreement

Any lender providing financial assistance for the Project and the Operator shall be entitled to enter into a supplementary escrow agreement with the Escrow Bank providing, *inter alia*, for detailed procedures and documentation matters not covered under this Agreement such as the rights and obligations of lenders, investment of surplus funds, restrictions on withdrawals by the Operator in the event of breach of this Agreement or upon occurrence of an Escrow Default, procedures relating to operation of the Escrow Account and withdrawal therefrom, reporting requirements and any matters incidental thereto; provided that such supplementary escrow agreement shall not contain any provision which is inconsistent with this Agreement and in the event of any conflict or inconsistency between provisions of this Agreement and such supplementary escrow agreement, the provisions of this Agreement shall prevail.

9 INDEMNITY

9.1 General indemnity

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

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

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

9.2 Notice and contest of claims

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

10 DISPUTE RESOLUTION

10.1 Dispute resolution

- 10.1.1 Any dispute, difference or claim arising out of or in connection with this Agreement which is not resolved amicably shall be decided finally by reference to arbitration to a Board of Arbitrators comprising one nominee of each Party to the dispute and where the number of such nominees is an even number, the nominees shall elect another person to such Board. Such arbitration shall be held in accordance with the Rules of Arbitration of the International Centre for Alternative Dispute Resolution, New Delhi (the "**Rules**") or such other rules as may be mutually agreed by the Parties, and shall be subject to the provisions of the Arbitration and Conciliation Act, 1996.
- 10.1.2 The Arbitrators shall issue a reasoned award and such award shall be final and binding on the Parties. The venue of arbitration shall be Delhi and the language of arbitration shall be English.

11 MISCELLANEOUS PROVISIONS

11.1 Governing law and jurisdiction

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

11.2 Waiver of sovereign immunity

The SPV unconditionally and irrevocably:

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

11.3 Priority of agreements

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

11.4 Alteration of terms

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

11.5 Waiver

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

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

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

11.6 No third party beneficiaries

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

11.7 Survival

11.7.1 Termination of this Agreement:

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

11.7.2 All obligations surviving the cancellation, expiration or termination of this Agreement shall only survive for a period of 3 (three) years following the date of such termination or expiry of this Agreement.

11.8 Severability

If for any reason whatever any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to dispute resolution under Clause 10.1 of this Agreement or otherwise.

11.9 Successors and assigns

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

11.10 Notices

All notices or other communications to be given or made under this Agreement shall be in writing, shall either be delivered personally or sent by courier or registered post with an additional copy to be sent by facsimile. The address for service of each Party and its facsimile

number are set out under its name on the signing pages hereto. A notice shall be effective upon actual receipt thereof save that where it is received after 5.30 (five thirty) p.m. on a business day or on a day that is not a business day, the notice shall be deemed to be received on the first business day following the date of actual receipt. Without prejudice to the foregoing, a Party giving or making a notice or communication by facsimile shall promptly deliver a copy thereof personally, or send it by courier or registered post to the addressee of such notice or communication. It is hereby agreed and acknowledged that any Party may by notice change the address to which such notices and communications to it are to be delivered or mailed. Such change shall be effective when all the Parties have notice of it.

11.11 Language

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

11.12 Authorised representatives

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

11.13 Original Document

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

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

SIGNED, SEALED AND DELIVERED

For and on behalf of OPERATOR by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of ESCROW BANK by:

(Signature)

(Name)

(Designation)

(Address)

(Fax No.)

SIGNED, SEALED AND DELIVERED

For and on behalf of [INSERT NAME OF THE AUTHORITY] by:

(Signature)

(Name)

(Designation)

(Address)

(Fax)

In the presence of:

1.

2.

SCHEDULE - J

(See Clause 26.3)

VESTING CERTIFICATE

1. The Director, [International Exhibition and Convention Centre Private Limited] (the "**SPV**") refers to the Operation Services Agreement dated *** (the "**Agreement**") entered into between the SPV and **** (the "**Operator**") for operation and management of the New Delhi Exhibition –cum-Convention Centre (the "**Project** ") on operate and manage basis.
2. The SPV hereby acknowledges compliance and fulfilment by the Operator of the Divestment Requirements set forth in Clause 26.1 of the Agreement on the basis that upon issue of this Vesting Certificate, the SPV shall be deemed to have acquired, and all title and interest of the Operator in or about the Project shall be deemed to have vested unto the SPV, free from any encumbrances, charges and liens whatsoever.
3. Notwithstanding anything to the contrary contained hereinabove, it shall be a condition of this Vesting Certificate that nothing contained herein shall be construed or interpreted as waiving the obligation of the Operator to rectify and remedy any defect or deficiency in any of the Divestment Requirements and/or relieving the Operator in any manner of the same.

Signed this *** day of ***, 200* at Delhi.

AGREED, ACCEPTED AND SIGNED

SIGNED, SEALED AND DELIVERED

For and on behalf of OPERATOR by:

For and on behalf of INTERNATIONAL EXHIBITION AND CONVENTION CENTRE PRIVATE LIMITED by:

(Signature)

(Signature)

(Name)

(Name)

(Designation)

(Designation)

(Address)

(Address)

In the presence of:

1.

2.